

## **GENERAL TERMS AND CONDITIONS OF CAL CONSULT**

### **1. DEFINITIONS**

1.1 In these general terms and conditions, the following definitions are employed:

<u>Equipment:</u>	the hardware to be sold by CAL Consult under the Agreement, including all peripherals and documentation.
<u>CAL Consult:</u>	CAL Consult Nederland B.V., having its registered office at Ede, the Netherlands, as well as its legal successors under universal or particular title.
<u>Services:</u>	all work, in any form and under any name whatsoever (maintenance, installation, service, Software development, contracting for work, hiring out personnel, etc.), which CAL Consult shall carry out for or on behalf of the Client.
<u>Defects:</u>	the failure of the Software to comply with the functional specifications stated in writing by CAL Consult and, in the event that customised software is developed, with the explicitly agreed specifications. A Defect will only be recognised as such if it can be demonstrated and reproduced.
<u>Client:</u>	any natural or legal person who shall commission CAL Consult to provide Software and/or Services or with whom CAL Consult shall enter into an Agreement or with whom CAL Consult shall be engaged in talks or negotiations regarding the conclusion of an Agreement.
<u>Agreement:</u>	any agreement concluded between CAL Consult and Client, any modifications or supplements to such agreements, as well as all (legal) transactions in preparation for or in implementation of such agreements.
<u>Products:</u>	all things, including documentation and work, reports, advice, know-how, methods, systems, etc., whether or not developed in co-operation with the Client, Equipment, testing equipment and Software and all (other) results of services provided by CAL Consult which are the subject of an Agreement.
<u>Software:</u>	the software made available to the Client by CAL Consult, including accompanying documentation and all corrections, new or improved versions, new modules, etc., provided subsequent to the conclusion of the Agreement.

### **2. APPLICABILITY**

- 2.1 These general terms and conditions shall be applicable to all Agreements and (legal) transactions between CAL Consult and Client, even when these (legal) transactions do not lead to or are not connected with an Agreement.
- 2.2 The applicability of any general terms and conditions that may be employed by the Client is hereby explicitly rejected.
- 2.3 The terms and conditions stipulated in a written agreement between CAL Consult and Client shall, insofar as they explicitly depart from them, prevail over the general terms and conditions described in the present document. Modifications and supplements to any stipulation in an Agreement and/or these general terms and conditions may only be agreed in writing and shall be valid only for the agreement concerned.

### **3. OFFERS/CONCLUSION OF AGREEMENT**

- 3.1 If Client shall place an order, the agreement will only come into effect after CAL Consult has accepted the order in writing or has begun to implement it.
- 3.2 All specifications regarding Products and/or Services shall be effected with care, but CAL Consult cannot guarantee that no deviations shall occur in this respect.
- 3.3 Offers shall always be issued without engagement and shall only apply as invitations to place orders.

### **4. CLIENT COOPERATION**

- 4.1 Client shall, within reason, provide full co-operation with respect to the execution of the Agreement.
- 4.2 Whether or not at the request of CAL Consult, Client shall punctually provide CAL Consult with all data, which are necessary and useful for the execution of the Agreement.
- 4.3 Client shall be responsible for the use and application of the Products and the Services provided by CAL Consult within his organisation, as well as for control and security procedures and adequate system management.

4.4 If data necessary for the execution of the Agreement shall not be made available to CAL Consult punctually or in accordance with the agreements which have been made, or if Client shall fail to meet his obligations in some other manner, CAL Consult shall in all cases have the right to suspend execution of the Agreement and shall be entitled to charge Client at its usual rates for costs incurred in this regard.

## **5. PRICES**

- 5.1 All CAL Consult prices will be quoted in Euros and will not include value added tax. The hourly rate for activities carried out by CAL Consult falling outside the maintenance contract from Monday to Friday between 9:00 and 17:00 hours will be agreed by offer. Adjustment of this rate and all mentioned prices will take place every year based on the inflation percentage published by the Central Bureau of Statistics in the Netherlands (Prices for services, commercial services, index number 72 services in relation to computers). For all activities outside the standard office hours we charge double tariff.
- 5.2 Unless explicitly agreed otherwise, Client shall bear Product implementation costs, travel and accommodation costs incurred with respect to the provision of Services and all other fees and taxes charged or levied in connection with any assignment. Travel time and travel costs will be charged as time spent against hourly rate. Additional costs made on order of the Client, like hotel expenses and flying costs, will be charged.
- 5.3 Any change in the factors which influence the price and the extra costs incurred by CAL Consult mentioned in subclause 1, including purchase prices, foreign exchange rates, import and export duties and other fees or taxes, may be passed on to the Client by CAL Consult. In the event that this shall occur within three months following acceptance of the order by CAL Consult, Client shall be entitled to dissolve the Agreement.
- 5.4 If Client shall be an entrepreneur established outside the Netherlands and the Products must be exported from the Netherlands (whether within the framework of intra-community deliveries or otherwise), Client shall guarantee that he or she has been validly registered for the applicable value added tax in the country concerned. Client shall indemnify CAL Consult against all damages which CAL Consult may suffer in consequence of the fact that CAL Consult shall have mistakenly invoiced Client on the basis of a zero rate, with the exception of cases in which Client shall have informed CAL Consult in writing, prior to the first invoice date, of the fact that he or she is not (validly) registered.

## **6. PAYMENT**

- 6.1 Invoices from CAL Consult must be settled within 14 days following the date of invoice in the manner stipulated by CAL Consult. Payment must be effected in the agreed currency and without set-off, deduction or suspension.
- 6.2 In case of overdue payment, all Client's payment obligations, irrespective of whether or not CAL Consult has already invoiced Client in this regard, shall become immediately due and payable.
- 6.3 In case of overdue payment, Client shall be legally obliged to pay interest equivalent to the statutory interest rate on the amount due to CAL Consult.
- 6.4 In the event that Client, even after expiry of an additional term of payment stipulated by means of registered letter, shall not have paid the amount and interest due, Client shall be obliged to compensate CAL Consult for all extrajudicial expenses and court costs, including reasonable expenses for legal assistance within the framework of or apart from legal proceedings.
- 6.5 Irrespective of any instructions by Client to the contrary, payments by or on behalf of Client shall serve successively to settle the amounts owed by him with respect to outstanding extrajudicial collection costs, court costs and interest due; subsequently, the said payments shall serve to settle the outstanding principal amounts, with the earliest invoices being paid first.
- 6.6 Client may only object to the invoice in writing, within the term of payment. If this shall not be possible due to any cause, which cannot be attributed to Client, Client shall in any case submit his objections in writing to CAL Consult as quickly as shall be reasonably possible.

## **7. DELIVERY/DELIVERY TIME/ACCEPTANCE**

- 7.1 Unless otherwise agreed, transfer of the risk with respect to Products shall be effected on delivery.
- 7.2 If a term shall be agreed within which the Services are to be carried out or the Products are to be delivered, this term shall be based on the circumstances prevailing for CAL Consult at the time of the Agreement and, insofar as it shall be dependent on performance by third parties, on the data provided to CAL Consult by the said third parties. The term of delivery and/or execution shall be complied with insofar as possible. Exceeding this term by CAL Consult shall not be construed as a failure in the performance of its obligations and shall not result in any liability for damage, of any nature whatsoever, on the part of CAL Consult towards Client, nor shall it entitle Client to dissolve the Agreement nor to suspend any obligation arising from the said Agreement and/or these general terms and conditions.
- 7.3 CAL Consult shall have the right at all times to effect partial deliveries of Products.

7.4 The acceptance of Software shall be governed by the stipulations as described in Clause 17.8 up to and including 17.11. Acceptance of other Products shall come into effect on the date of delivery or, if it has been agreed in writing that installation shall be carried out by CAL Consult, on the date of installation.

## **8. FORCE MAJEUR**

- 8.1 If CAL Consult shall be unable to meet its obligations towards Client by reason of a non-attributable shortcoming ("force majeure"), the said obligations shall be suspended for the duration of the case of force majeure.
- 8.2 If a case of force majeure shall have lasted for three months, either party shall be entitled to dissolve the Agreement in writing, in whole or in part.
- 8.3 Force majeure on the part of CAL Consult shall be understood to mean any circumstance beyond the control of CAL Consult by reason of which fulfilment of (the relevant part of) its obligations towards Client shall be hindered or delayed or can no longer be reasonably expected of it.
- 8.4 Parties shall inform each other of (potential) cases of force majeure as soon as possible.

## **9. INTELLECTUAL PROPERTY/COPYRIGHTS**

- 9.1 All intellectual property rights on Products made available to Client, irrespective of whether they have been developed in collaboration with or on order of Client, as well as on all accompanying preliminary material or other material such as analyses and reports and results of Services, shall remain vested with CAL Consult, its parent company CAL Consult GmbH, Marienbergstrasse 78, 90 411 Nuremberg (Germany), or a supplier which has authorised CAL Consult to provide the Products concerned to Client. Client shall acquire only the rights of use and licensing rights which have been explicitly granted to him or her.
- 9.2 Client shall not be permitted to remove or change any indication on the Products regarding copyright, trade mark, trade name or other intellectual property rights.
- 9.3 CAL Consult declares to the best of its knowledge that the Products infringe no third-party intellectual property rights valid in the Netherlands. If legal proceedings shall be instituted owing to infringement of such rights or if there shall be a possibility of such action being taken, CAL Consult may, at its discretion, and not excluding other courses of action, either replace or modify the Product concerned, or acquire the right to continue using the Product, or dissolve the Agreement in whole or in part, on reimbursement of the price paid by Client to CAL Consult for the said Product, less a reasonable amount for depreciation.
- 9.4 Client shall immediately inform CAL Consult in writing of any notice of liability or legal action based on the allegation that the use of the Products or the provision of Services by CAL Consult constitutes infringement of any intellectual property right valid in the Netherlands.
- 9.5 In the event of legal proceedings based on alleged infringement as referred to in the previous subclause, CAL Consult shall be entitled, yet not obliged, to exclusively conduct the defence or reach a settlement. CAL Consult shall then bear the costs and damages determined in the judicial decision or settlement.
- 9.6 CAL Consult shall accept no liability towards Client by reason of any infringement as referred to in subclause 3 if the infringement is related to the fact that Client shall have adapted or changed a Product or converted the code or shall have had these activities carried out by third parties, or shall have used the Product in connection or combination with equipment or software which may influence the performance of the Product and has not been provided by CAL Consult with the Product, or shall have used a Product in a manner which has not been stated in the documentation.
- 9.7 Client shall not be entitled to effect (or to have effected) any modification or adaptation in the Software provided or to convert or modify the code of the said Software without prior written permission from CAL Consult, except to the extent that this shall be permitted by mandatory provisions or by other stipulations in this Clause. In the event that Client shall wish to effect interoperability as referred to in the applicable rules, this shall be governed by the following regulation. Client shall not independently change or copy the Software or convert the code before submitting to CAL Consult a detailed, written request for the data which he or she requires in this connection and receiving a response from CAL Consult as referred to hereinafter. In the said request, Client shall specify the functionality of the other software and indicate the part of the Software for which he requires the source code. Within a reasonable time following submission of the request, CAL Consult shall inform Client in writing whether, and under which reasonable (possibly financial) terms, it is prepared to provide Client with the data referred to.
- 9.8 With due observance of the other provisions in these general terms and conditions, Client shall be entitled to correct Defects in the Software made available to him or her if this shall prove to be necessary in order to utilize the Software in the intended, appropriate manner.
- 9.9 Barring cases in which CAL Consult shall make a backup copy of the Software available to Client, Client shall have the right to retain backup copies of the Software, which shall also be understood to include the right to make backup copies. In these general terms and conditions, a backup copy is understood to mean: a corporeal object on which the Software is recorded, for use exclusively as a replacement for the original copy of the Software in the event of

involuntary loss or damage. The backup copy must be an identical copy provided with the same labels and indications as the original copy.

## **10. PRODUCT GUARANTEE**

- 10.1 During a period of three months after delivery or, if installation shall have been agreed between parties, three months after installation, CAL Consult shall, to the best of its ability, repair (or have repaired) any Defects in Products, on condition that the said Defects shall have been described in detail and reported in writing to CAL Consult within the said period. CAL Consult does not guarantee that the Products will work without interruption or Defects or that all Defects will be corrected. Software developed on instructions from Client under terms other than fixed price shall be repaired by CAL Consult at its customary rates and costs. CAL Consult may charge its customary rates and repair costs in the event of incorrect or injudicious use by Client or other causes which cannot be attributed to CAL Consult or if the Defects could have been detected by the performance of an acceptance test. Recovery of corrupted or lost data shall not be covered by the guarantee. The obligations under the guarantee shall be cancelled if Client shall effect (or have effected) any modifications in the Products without written permission from CAL Consult.
- 10.2 Rectification of Defects shall be carried out at a location to be stipulated by CAL Consult. CAL Consult shall have the right to effect provisional solutions and/or program diversions or problem-preventing restrictions in the Software.
- 10.3 In the event that CAL Consult shall deliver Products to Client which CAL Consult has obtained from its suppliers, CAL Consult shall never be bound by a more extensive guarantee or liability towards Client than that which CAL Consult may lay claim to with respect to its supplier. Client may inspect these conditions at the offices of CAL Consult or CAL Consult will send them to Client on request.
- 10.4 After expiry of the guarantee period referred to in subclause 1, CAL Consult shall not be obliged to rectify Defects unless a maintenance agreement stipulating such rectification has been concluded between parties.

## **11. CONFIDENTIAL INFORMATION**

- 11.1 Parties shall be reciprocally bound to secrecy with respect to anything regarding the other party which may come to their knowledge by reason of their relationship (such as Products, data files, orders, business information, prices, offers, reports and advice), unless the data concerned are public knowledge or the other party has explicitly indicated that secrecy is not required with respect to the said data or if one of the parties shall be required by law to disclose information. Parties shall not unreasonably refuse each other permission to make public the existence of a relationship between parties.
- 11.2 Parties shall be reciprocally bound to have their employees sign a written confidentiality agreement at the first request of the other party.
- 11.3 If CAL Consult has or has had access to personal data in the sense of the EU privacy regulation (GDPR) for the execution of the Services, CAL Consult will use it exclusively for the purpose of the efficient execution of the relevant Service. For example, personal data in the sense referred to here, insofar as these are logged by the software, will only be used by CAL employees when the Maintenance Contract is executed, and only for the purpose of resolving problems in the software supplied by CAL Consult or problems encountered in the use of the software supplied by CAL Consult.  
Personal data in the sense of the EU privacy regulation (GDPR) shall, only if necessary and for as long as they are needed, be shared with other CAL staff or recorded in writing or in digital form. Any personal data logged by the software in the sense of the EU privacy regulation (GDPR) will be deleted at the latest after 3 months. The personal data in the sense meant here, to which CAL employees have gained access during the execution of Services agreed with the Client, will not be shared with the Client or any other party.

## **12. EMPLOYEES**

- 12.1 During the execution of an Agreement and for a period of one year following termination of an Agreement, neither party may engage personnel employed by the other party nor enter into discussion with the said personnel regarding employment without prior written permission from the other party.
- 12.2 Client shall indemnify CAL Consult against all damage and liability resulting from claims and/or actions by employees of CAL Consult and/or by third parties engaged by CAL Consult in connection with industrial accidents and/or hazards in Client's company, as stipulated in Article 7A:1638x BW (Netherlands Civil Code).

## **13. TRANSFER OF RIGHTS AND OBLIGATIONS; SUBCONTRACTING**

- 13.1 Parties shall not be entitled to transfer the rights and obligations arising from an Agreement to a third party without written permission from the other party. Such permission shall not be refused without reasonable grounds. However, the party granting permission shall be entitled to attach conditions to such permission. Companies which form part of the same concern as CAL Consult are not to be considered as third parties.

13.2 CAL Consult shall be entitled to utilise the services of third parties in the execution of an Agreement, whether by means of subcontracting or through temporary hiring of personnel, unless Client shall object to this on reasonable grounds.

#### **14. DISSOLUTION**

14.1 In the event of (provisional) suspension of payments, bankruptcy or closing down or liquidation of Client's business, all Agreements with Client shall be legally dissolved, unless CAL Consult shall, within a reasonable time (where appropriate at the request of the administrator or trustee), indicate that it wishes to fulfil (a part of) the Agreement(s) concerned, in which case CAL Consult shall be entitled, without notice of default, to:

- (a) suspend execution of the Agreement(s) concerned until payment has been sufficiently secured; and/or
- (b) suspend all obligations which it may have towards Client;

in any case without prejudice to other rights held by CAL Consult under any Agreement with Client whatsoever and without CAL Consult being obliged to pay any compensation.

14.2 In the event that Client shall fail to properly fulfil any of its obligations arising from any Agreement, or if Client shall fail to do so within a stipulated term or neglect in some other manner to meet his obligations in time, Client shall be in default and CAL Consult shall be entitled, without notice of default or judicial intervention, to:

- (a) suspend execution of the said Agreement and any directly related Agreements until payment has been sufficiently secured; and/or:
- (b) dissolve the said Agreement and any directly related Agreements in whole or in part;

in any case without prejudice to other rights held by CAL Consult under any Agreement with Client whatsoever and without CAL Consult being obliged to pay any compensation.

14.3 In the event that an incident as referred to in subclause 1 or subclause 2 shall occur, all claims by CAL Consult against Client as well as the claims stipulated pursuant to the Agreement(s) concerned shall respectively become immediately and fully due and payable and Client shall be obliged to return all Products and any copies which may have been made of Products to CAL Consult.

14.4 On termination of an Agreement, the stipulations in Clauses 6 (Payment), 9 (Intellectual property/copyrights), 11 (Confidential information), 12 (Employees), 15 (Liability) and 19 (Applicable law/competent court) shall remain unimpaired.

#### **15. LIABILITY**

15.1 CAL Consult may in no case be held liable for any indirect damage suffered by Client or third parties, including consequential damage (such as damage due to loss of profit, losses due to delays, damage due to lost or unusable data, etc.), immaterial damage or trading loss.

15.2 CAL Consult's liability towards Client, on any basis whatsoever, shall, for each incident (whereby a related succession of incidents shall be considered as a single incident), be limited to the contractual sum in question (exclusive of V.A.T.) which CAL Consult shall have received from Client in connection with the delivered Product which caused the damage or the executed Services as a result of which the damage was caused. In the event that payment is to be made in instalments, this amount shall be additionally limited to the sum received by CAL Consult from Client during the previous twelve months. In the event that CAL Consult shall have reimbursed any amount to Client, CAL Consult's liability shall be additionally limited to that part of the amount paid by Client to CAL Consult which has not been reimbursed to Client. If no contractual sum can be indicated, CAL Consult's liability shall be limited to the amount, which it shall receive from its business liability insurer in connection with the matter in question. To the extent that claims lodged by Client against CAL Consult shall be related to Products which CAL Consult shall have obtained from its suppliers, CAL Consult's liability shall be limited to the amount which CAL Consult shall receive in compensation from the supplier concerned.

15.3 The limitations of liability stated in subclauses 1 and 2 shall not be applicable in so far as the damage concerned shall have been caused by gross negligence or intention on the part of CAL Consult or its highest executive staff or in so far as CAL Consult's liability shall result from mandatory and applicable product liability law.

15.4 With the exception of cases of gross negligence or intention on the part of CAL Consult or its highest executive staff, Client shall indemnify CAL Consult against all claims made by third parties, on any basis whatsoever, with respect to compensation for damages, costs or interest related to the Services or Products and/or arising from the use of the Products or Services, unless it can be shown that Client is in no way to blame for the damage concerned.



- 15.5 CAL Consult explicitly makes no guarantee with respect to recommendations or advice regarding installation or use of the Products, nor does CAL Consult make any guarantee with respect to such advice or instructions given by Client to his or her customers.
- 15.6 CAL Consult shall employ all legal and contractual means of defence which can be invoked to defend it, as well as its employees and non-employees for whose behaviour CAL Consult shall be liable under the law, against alleged liability towards Client.
- 15.7 Before CAL Consult carries out Services on Client's premises, Client is expected to protect his or her information, whether by making backups or in some other manner. CAL Consult shall not be liable for damage which would not have arisen if Client had protected his or her information, whether by making backups or in some other manner.
- 15.8 The stipulations in this Clause shall have no effect on CAL Consult's legal liability pursuant to mandatory legal provisions.
16. **SERVICES**
- 16.1 This Clause contains specific provisions for the Services to be carried out by CAL Consult for Client. In so far as they shall be in conflict, the stipulations in this Clause shall have priority over the other provisions in these general terms and conditions.
- 16.2 CAL Consult guarantees that:
- (a) the Services which it provides or which are provided on its behalf will be carried out in a professional manner, and
  - (b) the personnel to be engaged by CAL Consult for the execution of the Agreement shall, for the duration of the Agreement, meet and continue to meet any additional qualifications which may be agreed with respect to training, expertise and experience.
- 16.3 Whenever it shall be necessary for the execution of the Services, Client shall provide CAL Consult with timely access, free of charge, to all resources and facilities required by CAL Consult and shall ensure that the employees of CAL Consult, in so far as necessary for the execution of the Services, shall be allowed access to Client's premises, buildings, relevant equipment and data files and other information.
- 16.4 Unless otherwise agreed, Services shall be carried out during CAL Consult's usual working hours and days. If deemed necessary in the judgment of both parties, CAL Consult will perform Services outside its usual working hours. In that case, CAL Consult shall charge its usual rates up to 18.00; from 18.00 to 08.00 and in the weekend, double the usual rate will be charged.
- 16.5 If it shall appear that (part of) the Services cannot be carried out by reason of Client's failure to meet any obligation towards CAL Consult or due to any other circumstances which can be attributed to Client, Client shall be obliged to compensate CAL Consult for any expenses which it may have incurred in this respect, calculated on the basis of CAL Consult's general rates at that time..
- 16.6 Unless otherwise agreed, payment for maintenance shall be due semi-annually in advance, on 1 January and 1 June; payment for the development of customized software shall be effected as follows: 50% on commissioning the order, 50% on delivery or, if agreed, installation; payment for other Services shall be made monthly in arrears.
- 16.7 If the price shall be determined on the basis of subsequent calculation, CAL Consult may charge all hours worked for the execution of the Services, including travel time, with the addition of material costs as well as all other reasonable costs incurred by CAL Consult in connection with the performance of Services. In case of subsequent calculation, CAL Consult shall specify the hours and costs in the relevant invoice. Unless otherwise agreed, CAL Consult may adjust its hourly rates by giving at least three month's notice in writing.
- 16.8 If Client shall require supplements or modifications to the agreed Services which CAL Consult is to execute on the basis of the Agreement and CAL Consult shall be of the opinion that the Services shall be made more arduous or extensive as a result, this shall be considered as additional work which, with due observance of the following subclause, shall be charged separately to Client, even if a fixed price shall have been agreed between parties.
- 16.9 If CAL Consult shall be of the opinion that additional work is involved, it shall report this to Client as soon as possible and inform Client of the consequences which this shall entail for the price and for the term within which CAL Consult will be able to carry out all its other work under the Agreement. Unless Client, within eight days following the notice by CAL Consult referred to above, shall have registered a written objection to it, Client shall be considered to have agreed to the execution of the additional work and to the costs and consequences involved. CAL Consult may delay the performance of additional work until Client has given CAL Consult written instructions in this respect.
- 16.10 If Client shall pay a fee for maintenance, CAL Consult shall:
- (a) following detailed report of a Defect by Client, attempt to correct the Defect to the best of its ability or, in the case of Software obtained from a supplier, request the said supplier to correct the Defect in accordance with

his own terms and conditions. CAL Consult does not guarantee that the Software will operate without interruption or Defects or that all Defects will be corrected. Depending on the urgency involved, the results shall be provided to Client in a manner and within a time period to be determined by CAL Consult. CAL Consult shall have the right to effect provisional solutions and/or program diversions or problem-preventing restrictions in the Software;

- (b) provide improved versions of standard Software. Client shall not be obliged to accept these improved versions, but shall have the right, up to six weeks following delivery, to inform CAL Consult that he or she does not wish to make use of the version concerned. However, CAL Consult shall only provide maintenance to the latest and next-to-latest versions of a designated major release of standard Software. Client is obliged to upgrade the operating system if required by the Software. CAL Consult is not obliged to maintain or support Software running on an outdated operating system. When CAL Consult shall make a version with new options and functions available, Client may be required to pay an additional fee;
- (c) maintain a backup of the Software provided to Client on its own premises.

16.11 Maintenance shall not include:

- (a) customized software developed specifically for Client by CAL Consult;
- (b) installation of new versions of the control software and the application of modifications in the Software owing to alteration of the control software;
- (c) application of modifications in the Software by reason of amendments to Acts or changes ordered by government agencies or arising from government regulations, of any nature whatsoever;
- (d) Defects caused by incorrect or injudicious use on the part of Client or third parties engaged by Client or due to other causes, which cannot be attributed to CAL Consult. On request, CAL Consult will correct these Defects against payment of its usual fees and costs;
- (e) recovery of corrupted or lost data.

16.12 CAL Consult may charge its usual fees and costs in the event of incorrect or injudicious use or of other causes, which cannot be attributed to CAL Consult or if, the Software shall have been modified by parties other than CAL Consult. Recovery of corrupted or lost data is not included under maintenance.

16.13 Maintenance shall be contracted for a period of 2 (two) years, after which it shall be considered to have been automatically extended each year for a period of 1 (one) year, unless one of the parties, towards the end of the maintenance period, with due observance of a notice period of at least two (2) months, shall state that it wishes to terminate the maintenance agreement.

16.14 In the event that Client, with the approval of CAL Consult, shall effect modifications in the Software, CAL Consult shall only be obliged to perform maintenance on the modified Software if this has been explicitly agreed. If Client shall effect modifications in the Software without the approval of CAL Consult, CAL Consult shall, as of the moment at which these modifications were effected, no longer be obliged to perform maintenance on the said Software.

## **17. USE OF SOFTWARE**

17.1 This Clause contains specific provisions for the Software provided to Client by CAL Consult. In so far as they shall be in conflict, the stipulations in this Clause shall have priority over the other provisions in these general terms and conditions.

17.2 Right-of-use fees for the Software shall be due following delivery to Client.

17.3 Without prejudice to the provisions in Clause 9, CAL Consult shall grant Client the non-exclusive right to use the Software in object code for an indefinite period of time, with the understanding that Client shall only have the right to use new versions or new modules of the Software to the extent that a separate (maintenance) agreement in this respect shall have been concluded between parties. At all times, Client shall strictly observe the restrictions on use agreed between parties. Without prejudice to any other provision in these general terms and conditions, Client's right of use consists exclusively of the right to load and execute the Software. For each right of use on the Software, CAL Consult shall provide one (1) complete set of accompanying documentation.

17.4 The Software may be used by Client exclusively within his or her own company or organization on the processor and for the stipulated number or type of users or links for which the right of use shall have been granted. In so far as nothing shall have been agreed in this respect, the processor on which Client first used the Software and the number of links connected to that processor at the time of first use shall be counted as the processor and the number of links for which the right of use was granted. In case of malfunction of the said processor, the Software may be used on another processor until the malfunction is corrected. The right of use may extend to more than one processor in so far as this shall be explicitly apparent from the Agreement.

- 17.5 The right of use shall not be transferable. Client shall not be permitted to sell, lease, sublicense, alienate or grant limited rights on the Software and data carriers on which the Software has been recorded, nor to make the said Software and data carriers available to a third party in any manner or for any purpose whatsoever, even if the third party concerned is to use the Software exclusively on behalf of Client. Notwithstanding the preceding provision, Client shall be permitted to allow his or her customers remote access to Software on which CAL Consult or CAL Consult's parent company holds intellectual property rights, in all cases exclusively in order to download Client's data or upload data to Client's system. Client shall indemnify CAL Consult against all damages, which may ensue in this respect for CAL Consult, Client or third parties.
- 17.6 Client shall not modify the Software except in connection with the rectification of Defects nor use the Software to process data on behalf of third parties ("time-sharing"). The source code for the Software and the technical documentation, preliminary material, etc., produced in the course of developing the Software shall not be provided to Client.
- 17.7 Immediately following termination of the right of use for the Software, Client shall be obliged to return all copies of the Software in his or her possession to CAL Consult. In the event that parties have agreed that Client shall destroy the said copies of the Software on termination of the right of use, Client shall inform CAL Consult in writing as soon as the said copies have been destroyed.
- 17.8 If an acceptance test shall have been agreed in writing, the test period shall cover the ten working days following delivery or, in the event that installation by CAL Consult has been agreed in writing, following completion of the installation. Client shall not be permitted to use the Software for productive or operational purposes during the test period.
- 17.9 Parties shall consider the Software to have been accepted:
- (a) if no acceptance test shall have been agreed between parties, on delivery or, in the event that installation by CAL Consult shall have been agreed in writing, on completion of the installation, or
  - (b) if an acceptance test shall have been agreed between parties in writing, on the first day of the test period, or
  - (c) if CAL Consult, prior to the end of the test period, shall receive a test report as referred to in subclause 10, at the moment at which the Defects stated in the said test report shall have been corrected, notwithstanding the presence of Defects which do not preclude acceptance under subclause 10.

Notwithstanding the preceding provisions, if Client shall make any use of the Software for productive or operational purposes prior to the time of acceptance, the said Software shall be considered to have been fully accepted as of the first moment of such use.

- 17.10 In the event that, on execution of the agreed acceptance test, the Software shall appear to contain Defects, Client shall be obliged to inform CAL Consult regarding the Defects by means of a detailed, written test report submitted no later than the last day of the test period. CAL Consult shall endeavour, to the best of its ability, to correct the reported Defects within a reasonable period of time, whereby CAL Consult shall have the right to effect provisional solutions and/or program diversions or problem-preventing restrictions in the Software.
- 17.11 Acceptance of the Software may not be withheld on any grounds other than those related to specifications which shall have been explicitly agreed between parties, nor may it be withheld by reason of the existence of slight Defects, i.e. Defects which do not reasonably preclude operational or productive use of the Software.

## **18. SOFTWARE DEVELOPMENT**

- 18.1 This Clause contains specific provisions for Software developed by CAL Consult by order of Client. In so far as they shall be in conflict, the stipulations in this Clause shall have priority over the other provisions in these general terms and conditions.
- 18.2 Parties shall specify the Software which is to be developed and the manner in which this is to be effected in writing. CAL Consult shall carry out the software development with all due care, based on the data to be provided by Client, the correctness, completeness and consistency of which shall be guaranteed by Client.
- 18.3 CAL Consult shall be entitled, but not obliged, to investigate the correctness, completeness and consistency of the data or specifications provided and, in the event that irregularities are detected, to suspend the Services until Client shall have removed the irregularities concerned.
- 18.4 Without prejudice to the provisions in Clause 9, Client shall have the right to use the Software in object code for an unlimited period of time within his or her company or organization. Without prejudice to CAL Consult's intellectual property rights and exclusively to the extent that this shall have been explicitly agreed, the Software source code and the technical documentation, preliminary material, etc., produced in the course of developing the Software shall be provided to Client and Client shall be entitled to effect modifications in the said Software. By making the source code available, CAL Consult shall be discharged from all its obligations in respect of guarantee, liability, etc.



**19. APPLICABLE LAW/COMPETENT COURT**

19.1 These general terms and conditions, all offers and Agreements with CAL Consult and all disputes, which may arise in this connection, shall be governed exclusively by the law of the Netherlands.

19.2 Exclusively the competent court at Arnhem shall adjudicate disputes between CAL Consult and Client.

**20. CONVERSION**

20.1 In the event and to the extent that no appeal can be made with respect to any provision in these general terms and conditions on grounds of reasonableness and fairness or unreasonably onerous nature, the said provision shall be interpreted, as consistently as possible in terms of content and purport, in such a manner that appeal can then be made.

These terms and conditions were deposited on December 3<sup>rd</sup> 1996 at the Chamber of Commerce of Centraal Gelderland in Arnhem (NL), under the registration number 09787100 and will be sent free of charge to the client on his request.