



VALUE ADDED IT SECURITY DISTRIBUTION

## GENERAL CONDITIONS

Version 2024

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## 1. GENERAL

### 1.1 Applicability

1.1.1 These conditions are applicable to all proposals and agreements between Contec and Customer.

1.1.2 **Purchase conditions or any other conditions used by Customer will not be applicable.** The applicability of purchase conditions or any other conditions from Customer or from third parties on behalf of Customer is therefore expressly rejected by Contec, unless explicitly accepted in writing by Contec.

1.1.3 Contec may change or revise in whole or in part, the General Conditions Contec, which may mean that (entirely) new General Conditions Contec are created. The modified and/or revised General Conditions Contec will become applicable, unless objections against modifications are made in writing within 30 (thirty) days of the notification date of the change.

1.1.4 Changes in and additions to the General Conditions Contec and/or agreements made between Contec and Customer are only valid when agreed to by Contec in writing.

1.1.5 If Customer uses a trade name which covers more than one legal entity or organization, each will be responsible for the entire fulfillment of the obligations that may flow forth from the agreement with Contec.

1.1.6 The headings above the clauses of these conditions are only intended to increase the legibility of this document. The content and meaning of a clause placed under a particular heading is, not limited to the meaning and content of the heading.

### 1.2 Definitions

1.2.1 In the General Conditions Contec the following words and expressions are capitalized. Any of the following words and expressions shown in the singular shall have the same meaning when used in the plural and vice-versa.

1.2.2 **Advance:**  
As further described in clause 6.5.

1.2.3 **Back-up:**  
Spare copies of digital data and/or information.

1.2.4 **Business Days:**  
Normal Dutch working hours (8.30-17.00 CET) and days (Monday through Friday) with the exception of public holidays.

1.2.5 **Contec:**  
Contec B.V. and its rightful successors or

affiliated organizations and partners that will enter into an agreement with Customer and has declared the General Conditions Contec applicable.

1.2.6 **Customer:**

Anyone who requests and orders the delivery of Products.

1.2.7 **Contec Products:**

All products and services provided by Contec and the resulting provisions and related activities, which do not originate from third parties and whose intellectual property rights, industrial property rights and other rights are held by Contec.

1.2.8 **Courses:**

All courses, trainings and related activities.

1.2.9 **Error:**

As further described in clause 5.9.

1.2.10 **Fixed Price:**

As further described in clause 6.3.

1.2.11 **Feasibility Study:**

As further described in clause 5.1.1.

1.2.12 **Maintenance:**

As further described in clause 2.3.

1.2.13 **Object Code:**

The computer programming code substantially in binary form. It is directly executable by a computer after processing, but without reverse engineering, compilation or assembly.

1.2.14 **Products:**

All Contec Products and/or Third Party Products provided by Contec, the resulting provisions and related activities.

1.2.15 **Source Code:**

The computer programming code that may be displayed in a form readable and understandable by a programmer of ordinary skill. It includes related Source Code level system documentation, comments and procedural code. Source Code does not include Object Code.

1.2.16 **Subsequent Calculation:**

As further described in clause 6.4.

1.2.17 **Support:**

As further described in clause 2.5.

1.2.18 **Third Party General Conditions:**

Third Party General Conditions are understood as the conditions, applicable to Third Party Products.

1.2.19 **Third Party Products:**

All products and services provided by Contec, the resulting provisions and related activities,

which originate from third parties.

**1.2.20 Warranty:**

As further described in clause 5.11.

**1.3 Confirmation**

**1.3.1** Verbal agreements, assignments or other expressions of whatever nature by employees of Contec are only valid and binding when they have been confirmed in writing by authorized representatives of Contec.

**1.4 Offers**

**1.4.1** All offers made are without engagement, unless the offer explicitly indicates otherwise in writing.

**1.4.2** Offers are based on the data, information or requirements made known by Customer as set out in clause 1.6.

**1.5 Agreements**

**1.5.1** An agreement between Contec and Customer, for which no further contract and/or term has been agreed, has a term of 1 (one) year if the delivery concerns a Product for which a periodic fee is charged such as but not limited to Maintenance and Support. If this agreement is not terminated or not timely terminated, it shall be extended repeatedly in increments of 1 (one) year.

**1.5.2** Termination of the agreement occurs by means of a registered letter, which must be received by the other party no later than 40 (forty) days prior to commencement of the extension date of the agreement.

**1.5.3** Contrary to clause 1.5.2, an overtime continuing performance contract between the parties cannot be terminated as long as there is a further and/or additional agreement in force between the parties. Termination of the agreement will in that case only take place by the date that the (further) agreement with the longest remaining term expires between the parties, with a minimum notice period of 3 (three) calendar months.

**1.5.4** Each party has the right to terminate the agreement wholly or partially without judicial intervention by means of a signed registered letter. This can be done if, after notifying the breaching party in writing of a failure to fulfill its obligations, the breaching party then fails to meet the aforesaid obligations within a reasonable period of time.

**1.5.5** Contec has the right to immediately terminate the agreement, wholly or partially, without judicial intervention through means of a non-judicial declaration and/or withdraw and/or

annul an offer without prejudice to his right to claims damages, if Customer is a person and becomes deceased, if Customer submits a legal request for debt restructuring, if bankruptcy or suspension of payment has been filed for Customer, if Customer is in a state of bankruptcy or suspension of payment has been granted or if Customer's company is liquidated or ended for any reason other than reconstruction or company merger, or if a substantial part of Customer's assets is seized or if the Customer loses the free disposal of a substantial part of its capital. In these cases, any claim by Contec will be immediately due and will not make Contec liable to Customer in regard to the termination.

**1.5.6** An agreement between Contec and Customer, for which a fixed-term is agreed upon, such as but not limited to License- and/or Managed Security Services agreements, cannot be terminated prematurely.

**1.5.7** After the agreement has been ended, for any reason, Customer can no longer obtain any of the rights provided by the agreement, leaving unhindered the existence of the obligations of both parties which by their nature continue automatically after the conclusion of their agreement, such as but not limited to, obligations concerning property rights, confidentiality and non-competition.

**1.6 Co-operation/Information Requirements For Customer**

**1.6.1** All assignments are carried out by Contec on the basis of data, information, requests and/or requirements made known to Contec by Customer.

**1.6.2** Customer shall provide all necessary cooperation to Contec and shall make timely known all useful and necessary data and/or other information required for an adequate execution of the agreement. Customer shall ensure the accuracy of this data and/or other information.

**1.6.3** If data, information and/or requirements necessary for execution of the agreement, are not provided, not timely provided and/or not provided in accordance with the agreement, or if Customer fails to meet its obligations in any other way; then Contec has in any case the right to terminate or dissolve the agreement or to suspend execution of the agreement and Contec has the right to charge the costs

incurred at its usual rates.

1.6.4 If changes and/or new facts arise in regard to data, information, requests and/or requirements previously provided, Contec will always be fully justified, in consultation with Customer, to adjust the agreement to these new circumstances or to dissolve or annul the agreement.

1.6.5 If Customer makes functional improvements or any other adjustments in the Products (after first having received the written permission from Contec, as further described in clause 2.1.4), Customer is obliged to report such adjustments to Contec, in the event that Contec provides Maintenance, Support, or any other services with regard to Products provided to Customer.

1.6.6 In the event Contec performs activities in a location other than its own, Customer will be responsible for providing free of charge reasonably requested facilities, such as office space and telecommunication facilities.

## 1.7 Confidentiality/Non-competition

1.7.1 Contec and Customer mutually commit themselves to the confidentiality of all data and information concerning each other's organization, clients, files and Products, of which they become aware while working for each other or for Customer's clients. Data and information may only be used in order to carry out the agreement between parties.

1.7.2 Client acknowledges that all Products and Services originating from Contec contain trade secrets of Contec and/or the suppliers of Contec, and that Client shall treat all Products and Services originating from Contec as such.

1.7.3 Contec is authorized to place the name and logo of Customer or Customer's clients who are given rights to the Products on the Contec website and/or reference list and to make them available to third parties for information.

1.7.4 Customer and its clients will not enter into any direct or indirect commercial, employment, or other such relations with employees from Contec during the agreement and for a period of 12 (twelve) months after termination or dissolution of the agreement, without the written consent of Contec. Customer will ensure that its clients will comply with the foregoing obligation.

1.7.5 In the event that Customer breaches clause 1.7.3, Customer will be charged, without further notification required, a fine of € 50,000 (fifty thousand euros) for each breach, undiminished the right of Contec to claim full compensation for

damages incurred.

## 1.8 Liability

1.8.1 Contec's total liability shall be limited, in accordance with clauses 1.8.2 and 1.8.3, to compensation for direct damage and to a maximum of the amount (excluding VAT) received from Customer by Contec of the price stipulated in the agreement (excluding VAT) to a maximum of € 250.000,- (two hundred and fifty thousand euros), whereby a sequence of events is regarded as one event.

1.8.2 If the agreement also includes an agreement over time with a term of more than 1 (one) year and Contec's liability flows forth from the agreement over time, the stipulated price will be calculated on the basis of the total amount (excluding VAT) as actually paid by Customer to Contec on the basis of the agreement over time for 1 (one) year (this being the year in which the damage occurred) to a maximum of € 250.000,- (two hundred and fifty thousand euros).

1.8.3 Contec has insured itself against damage. Contec is in any case not liable for further damage and will not compensate for any further damage which Customer may suffer on the basis of the agreement entered into with Contec, however caused, including possible claims of liability against Customer by third parties, than is covered and actually compensated for by the insurance increased with Contec's deductible (own risk), except in case of malicious intent (opzet) or reckless disregard (bewuste roekeloosheid).

1.8.4 Contec's total liability for damage resulting from death or physical injury will in no event amount to more than € 1,000,000 (one million euros), whereby a sequence of events is regarded as one event.

1.8.5 Direct damage is exclusively understood as:

- The reasonable costs made in determining the cause and extent of the damage;
- The reasonable costs incurred in prevention or limitation of the damage, to the degree that Customer can demonstrate that these costs have led to the limitation of the damage.
- The reasonable costs incurred to repair damage, insofar as the Customer demonstrates that these costs resulted in the repair of damage and Contec itself, after written request, cannot offer a timely

solution for the repair of damage.

- 1.8.6 Contec's liability for consequential damage, is expressly rejected. Consequential damage is understood as damage other than direct damage as exhaustively worded in article 1.8.5, such as but not limited to, loss of profit, missed savings, destruction or loss of files and/or data, damage caused by delay, suffered loss, damage caused by the inadequate provision of information and/or provision of cooperation by the Client, damage due to business stagnation or claims of third parties against the Client.
- 1.8.7 No event related to the performance of the Agreement by Contec shall be interpreted by the Client as implying an expression by Contec that Contec will fail in the performance of its obligations, or that the performance by Contec is permanently impossible, unless Contec expressly notifies the Client in writing in so many words with that intent.
- 1.8.8 With the exception of the cases named in this clause 1.8, Contec has no liability for damage compensation regardless of what an action towards compensation could be based upon.
- 1.8.9 Contec's liability exists solely when Customer immediately and appropriately notifies the board of directors of Contec of the deficiency in writing, proposing therein a reasonable time period for correction of the deficiency and Contec then culpably fails to meet the aforesaid obligations. The notification of deficiency ought to be as detailed a description of the deficiency as possible so that Contec is able to react adequately.
- 1.8.10 The condition for the existence of any right to compensation is always that Customer notifies Contec in writing by registered mail within 60 (sixty) days after the damage came into existence and takes the necessary measures to limit the damage as much as possible.
- 1.8.11 Customer indemnifies Contec from all liability regarding third parties due to allegations as a consequence of deficiency in a product, system or service provided by Customer to third parties that consisted of a delivery made by Contec.
- 1.8.12 Contec is not liable for damage regardless of its nature caused by Third Party Products which Contec has delivered to Customer. If possible Contec will transfer its rights for damage compensation from the supplier of the Third Party Product in question to Customer.
- 1.8.13 Unless parties have concluded a Service Level Agreement in which is agreed upon otherwise, Contec is not liable for any damage regardless

of its nature, which is the result of a failure to provide Support, Maintenance and/or Warranty on time. Contec is not liable for damage of any kind resulting from the fact that Contec must comply with certain changing and new legislation and other regulations

## 1.9 Transfer

1.9.1 The agreement between Contec and Customer and the rights and obligations, which flow forth from this agreement, cannot be transferred to a third party by Customer without the prior written consent from Contec.

1.9.2 Customer gives Contec in advance the right, without needing the explicit approval of Customer, to transfer the whole agreement or parts thereof to:

- a) holding-, sister- and/or subsidiary companies;
- b) a third party in the case of merger or acquisition of Contec.

In the event this happens, Contec will inform Customer.

## 1.10 Force Majeure

1.10.1 Neither party shall be obliged to fulfill any obligation if it is prevented from doing so as a result of a circumstance that is not due to its fault, nor for its account by virtue of the law, legal act or generally accepted practice. The aforementioned circumstances also include all circumstances beyond the control of Contec, such as but not limited to shortcomings of suppliers of Contec, Errors in Third Party Products and Services, fire, explosion, loss of electricity, (D)Dos attacks, hacking, cracking or any downtime or unavailability due to unlawful acts of third parties and/or due to (cyber)crime, (cyber)vandalism, the destruction, damage or rendering unusable by whomever of any automated work or any work for telecommunications, disturbance in the passage or operation of such work, or thwarting, by whomsoever, any security measure taken with respect to such work, network failures, flooding, illness, the unavailability of one or more members of staff, strikes, accidents, acts of government, the impossibility of obtaining any required license or permit, material shortages, theft, war, terrorism, traffic congestion and/or transportation impediments..

1.10.2 When force majeure is of a temporary nature, Contec has the right to suspend its commitments until the force majeure has



ceased to exist without being obliged to any form of damage compensation.

1.10.3 Contec reserves the right, in the case of force majeure, to collect payment for obligations already fulfilled before force majeure was known.

1.10.4 In the event that the force majeure of either party surpasses a three month period, either party has the right to terminate the agreement in writing without being obliged to any form of damage compensation regarding such termination.

## 1.11 Nullity

1.11.1 If one or more terms (or part of a term) of the agreement are nullified, declared to be nullified, annihilable or have lost their validity in another way, the other terms (or part of the term in question) of this agreement will remain in force undiminished.

1.11.2 In regard to terms (or part of the term) that are nullified, declared to be nullified, annihilable or lose their validity in another way, parties shall consult with each other to try to reach a substitute arrangement with in which the parties shall strive for the maintenance of this agreement (or the remainder of the term in question) in its totality.

## 1.12 Applicable Law and Dispute Mechanism

1.12.1 All agreements made between Contec and Customer are governed by the laws of The Netherlands. Parties explicitly agree that the United Nations Convention on Contracts for the International Sale of Goods (CISG) is not applicable.

1.12.2 Any dispute between parties arising under any agreement, which cannot be resolved amicably, will be solved through arbitration of the Stichting Geschillenoplossing Organisatie en Automatisering (SGOA) (The Dutch arbitration court (foundation) for ICT related matters), in accordance with the SGOA's regulations for arbitration. With the mutual agreement of both parties, parties may try to solve their disagreement through other provisions offered by the SGOA for the settlement of disputes prior to arbitration. If a dispute between parties concerns an amount less than € 250.000,- (two hundred and fifty thousand euros), parties mutually agree to place the dispute before 1 (one) arbitrator.

1.12.3 If the SGOA declares itself unauthorized or if parties mutually agree to such, disputes will be placed before the court of the District Overijssel,

subdistrict (zittingsplaats) Almelo, The Netherlands.

1.12.4 Either party also may, without waiving any remedy under the agreement, seek from the court of the District Overijssel, subdistrict (zittingsplaats) Almelo any interim or provisional relief that is necessary to protect the rights or property of that party or initiate a debt collection procedure at the court of the District Overijssel, subdistrict (zittingsplaats) Almelo.

1.12.5 The General Conditions Contec are translated from the original Dutch version and the intention thereof is valid in any disagreement.

## 2. CONTEC PRODUCTS

### 2.1 Products and Services

2.1.1 Within the context of the procurement of Products and Services from Contec, Client makes explicit choices for the procurement of certain Products and Services, and more specifically within the context of the Service Level Agreement (SLA), Backup facilities, Hosting and security measures.

2.1.2 The choices made by Customer in the procurement of these services shall directly affect what Customer may expect from Contec within the context of the Products and Services. Client expressly waives all claims, demands or claims directly or indirectly based on the view that more could be expected from Contec within the context of its services than what Contec is obliged to do on the basis of the explicit choices made by Client for the procurement of these Products and/or Services.

2.1.3 If the Customer is of the opinion that he has insufficient knowledge or skills to be able to make a well-considered choice with regard to the Products or services to be acquired from Contec, the Customer shall let Contec know in writing, in good time on his own initiative, so that Contec can advise the Customer accordingly.

### 2.2 User Rights Software Programs

2.2.1 Customer is granted the non-exclusive right to use the Products and – if available at Contec – corresponding documentation.

2.2.2 User rights are limited exclusively to own use of the Products for the agreed upon Central Processing Unit (CPU), number of users, servers and/or workstations (licenses). If no limitations have been agreed upon, user rights will be limited to the CPU on which the Products were first installed and the number of

users/licenses) will be limited to 1 (one) individual user.

**2.2.3** User rights for software Products are limited to the Object Code. Rights to the Source Code are not provided, unless explicitly agreed upon otherwise in writing.

**2.2.4** It is prohibited for Customer directly or indirectly (through a third party) to copy, duplicate or alter the Products in any way, without the prior written approval from Contec.

**2.2.5** Customer is allowed to make one Back-up copy of the Products for safety purposes only, if a Back-up is not provided for by Contec. The Backup made may not be used by Customer for operational purposes without the prior written consent of Contec.

**2.2.6** User rights on the Products cannot be transferred to any third party (third parties also include holding-, sister- and/or subsidiary companies).

**2.2.7** Customer does not have the right to make the Products available, under any title or in any way whatsoever – whether or not for a fee –, to any third party (third parties also include holding-, sister- and/or subsidiary companies).

**2.2.8** Reverse engineering, decompilation, or any other translation of the Products (or a part thereof) to a for humans readable form, is not permitted by Customer, unless such is explicitly permitted by mandatory law.

**2.2.9** The user rights shall go into effect after Customer has made the required payments and fulfilled its other obligations.

**2.2.10** The extent of the user rights on Third Party Products is determined by the Third Party General Conditions as described in clause 4. Where the foregoing does not deviate from the Third Party General Conditions, the foregoing will also be applicable.

## **2.3 Verification**

**2.3.1** Contec is entitled to incorporate technical limitations and control mechanisms in the Products in order to prevent and/or verify that the the agreed upon number of user rights (licenses) are not exceeded..

**2.3.2** Contec is entitled itself or through the use of a third party, as long as Customer makes use of the Products, to make unannounced verification visits to the locations where the Products are used. Customer shall provide all necessary cooperation and access. In the event Customer refuses cooperation and/or access, Contec will be entitled to terminate the agreement

immediately. In this event Customer will no longer be entitled to use the Products and will be obligated to return or destroy any copies made thereof within 30 (thirty) days after the first request of Contec.

**2.3.3** If, on the basis of the above described verification procedure or otherwise, it appears that the actual number of users, servers and/or workstations surpasses the number of users, servers and/or workstations agreed upon, Customer will be obligated to immediately acquire the missing number of users, servers and/or workstations licenses and pay an additional fine of 25% over the amount due. Amounts indebted for Maintenance and Support for the missing users, servers and/or workstations will be charged from the moment of delivery of the previously agreed upon number of users, servers and/or workstations. In addition Contec reserves the right to report to the Business Software Alliance (BSA).

## **2.4 Maintenance**

**2.4.1** Contec may offer Customer, depending on the Products delivered, the option of acquiring Maintenance.

**2.4.2** Maintenance on the Products is based on a periodic Advance and may solely involve a Subscription method and further to be specified terms and conditions. Where these further to be specified terms and conditions do not deviate herefrom, clause 2.4 will be applicable.

**2.4.3** Maintenance includes providing updates and – if available at Contec – documentation of the licensed Products delivered to Customer, which either contain a qualitative (e.g. Error fix) or a functional improvement of the Product that has been made available. Contec is not obliged to actively keep Customer up to date concerning possible updates of the Products.

**2.4.4** If Maintenance results in a functional improvement, Contec will have the right to charge extra payment to compensate for this functional improvement.

**2.4.5** Contec is authorized to refuse the provision of Maintenance if the Products provided by Contec or the environment in which the Products operate are altered by Customer in any way or form.

**2.4.6** If Customer refuses to install updates of the Products that are offered by Contec to Customer, then Contec reserves the right to terminate the agreement or to adjust the agreement in accordance with the refusal to



install updates.

## 2.5 Advice

2.5.1 All Products that can be considered advice or which can be described as advice, such as but not limited to Support (clause 2.5), consultancy, project management, Feasibility Study (clause 5.1), Managed Security Services and/or performing audits, will only be given to the best of Contec's knowledge and capability.

2.5.2 Contec is not responsible and/or liable if the activities that follow forth from advice result in Customer's failure to carry out a project within allocated budgets, time schedules and other agreed upon conditions.

2.5.3 Contec will provide advice on the basis of the conditions required by Contec and information received from Customer as mentioned in clause 1.6. If it appears that not all relevant information has been received and/or other problems and/or insights may arise, such as but not limited to incompatibility problems (products are unable to interoperate with each other), the given advice may be adjusted to the new circumstances.

## 2.6 Support

2.6.1 Support consists of providing verbal (telephonic) and written (e-mail) advice concerning the use and operation of Contec Products. Support is initially based on a periodic Advance.

2.6.2 Contec will only provide Support on the most current updates of the Products. Contec is entitled at its sole discretion to provide Support on older versions, releases, etc. of the Products.

## 2.7 Custom Work

2.7.1 All assignments consisting wholly or partially of custom work are billed on the basis of Fixed Price or charged against actual time spent on Subsequent Calculation.

2.7.2 Parties shall specify in writing the manner of development and the Contec Product to be developed. Contec will carry out the Contec Product development activities with due care on the basis of information provided by Customer, for which information Customer ensures the accuracy, completeness and consistency.

2.7.3 Contec may provide an estimate to the Customer prior to the performance of Custom Work, detailing the work and costs initially expected. This estimate is only indicative and not binding on Contec. Actual costs will be

invoiced on the basis of actual time spent in accordance with article 2.7.1.

2.7.4 Contec is authorized, but not obliged, to investigate the correctness, completeness and/or consistency of the data or specifications provided to Contec and, if it is determined that there is any inaccuracy, incompleteness or inconsistency, to suspend activities until such time as Customer has remedied the deficiencies.

2.7.5 If Customer does not or no longer wishes the Custom Work of a Product or Service and/or a (subsequent) phase thereof, Customer shall inform Contec thereof in writing, subject to the agreed notice periods. Customer shall be deemed to have agreed to the execution of (subsequent) phases and the associated costs if Customer has allowed the execution of the phase to take place without first indicating in writing that it does not or no longer wishes these (subsequent) phases.

2.7.6 A deviation of 10% in the prices mentioned will be deemed to be accepted by Customer and will not require further notification to and/or approval by Customer.

2.7.7 Intellectual property rights, industrial property rights, and other rights to custom work remain at all times with Contec, as described in clause 7.1.

## 2.8 Additional Work

2.8.1 If, in the opinion of Contec, a change request by Customer is in fact a request for additional work, Contec will notify Customer thereof prior to performing additional work. Upon Customer's request, the notification will be followed by a specification of the price and additional conditions. Customer will decide as soon as possible whether to carry out the additional work.

2.8.2 It will be assumed that Customer has agreed to the performance of additional work and the connected costs, if Customer has allowed additional work to take place without raising objections in writing prior to the commencement of additional work.

## 2.9 Installation and Implementation

2.9.1 Contec will only install and/or implement the Products or have them installed and/or implemented if agreed upon in writing.

2.9.2 Prior to installation and/or implementation Customer will see to it, at its own expense, that all conditions required by Contec have been met in order to ensure a successful installation

and/or implementation.

**2.9.3** Customer will ensure and is entirely responsible for fulfilling the necessary Third Party General Conditions in order to let installation and/or implementation take place legally.

**2.9.4** If implementation and/or installation has not been performed within the agreed upon time schedule due to Customer's fault, Customer will make payments as if implementation and/or installation has been performed, undiminished the obligations of Contec to proceed with installation and/or implementation at a later time period.

## **2.10 Back-ups**

**2.10.1** Customer will be responsible for making Back-ups on time. Upon Customer's request, Contec will inform Customer of the procedures and security measures necessary regarding securing data and the realization of Back-ups.

**2.10.2** Only if Contec has explicitly agreed in writing that Contec will provide partially or entirely for the provision of Back-ups, Contec will make the Back-ups. Contec is in no way liable for these Backups in respect of but not limited to the total or partial loss of Back-ups and / or errors in the Back-ups, or any other loss or unusability of data. The Customer is at all times fully responsible for regularly checking and testing the integrity, readability and usability of the Backups. This also applies if Contec restores a Back-up for the benefit of the Client, regardless of the reason for this restoration.

**2.10.3** Customer is entirely responsible for the making of Backups in advance if the Customer performs actions that can lead to data loss or has a third party perform said actions with regard to the Products and / or the environments and / or equipment on which the Products operate. Contec is not liable for damage if the Customer has not complied with this paragraph

## **2.11 Activities**

**2.11.1** Any activities, Maintenance, Support and other services will take place without interruption on Business Days and under normal working conditions.

**2.11.2** Activities that are performed outside of Business Days are considered as overtime. Overtime after or before Business Days will be charged in accordance with the rates regarding evening-, weekend- and/or nightshifts applicable at that time.

**2.11.3** For every continuous period within which Contec performs activities at a location other

than Contec's place of business, Contec will submit an estimate of hours. The actual costs and/or time spent will be charged based on Subsequent Calculation, unless parties have agreed upon otherwise in writing.

**2.11.4** If parties agree that activities will take place in phases, Contec will be entitled to postpone activities for the following phase until Customer has accepted in writing activities performed in the previous phase.

**2.11.5** Contec will only be obligated to follow timely and reasonable instructions given by Customer when performing activities if agreed upon explicitly in writing. Contec is not obligated to follow instructions that will alter the content or scope of the agreed upon activities. In the event such instructions are followed, the activities performed will be charged on the basis of Subsequent Calculation.

**2.11.6** Contec is entitled, without the explicit consent of Customer, to make use of third parties when performing activities.

## **3. COURSES**

### **3.1 Application**

**3.1.1** Participation in Courses must be applied for at least 2 (two) weeks prior to commencement of the Course. If the requested Course is fully booked, Customer shall be notified.

**3.1.2** Immediately after receipt of an application Contec will send a confirmation of receipt regarding the applied for Course. For applications which have been made verbally, the confirmation will be considered to reflect the application correctly and completely, unless objections are made in writing within 3 (three) Business Days.

**3.1.3** Courses are given against the current applicable rate. Contec has the right to charge costs made such as rent for office space, Course materials, etc.

### **3.2 Cancellations**

**3.2.1** Contec reserves the right to cancel a Course if the required number of applications is not met. If such cancellation takes place Customer will initially be notified at least 1 (one) week prior to commencement of the Course. Any Course fees paid will be reimbursed. Customer may also decide to participate in the Course against a higher fee. This will be arranged in consultation.

**3.2.2** Cancellations made by Customer 14 (fourteen)

days prior to commencement of the Course are free of charge, after which 50% of the indebted Course fee will be charged. Contec will be entitled to charge 100% of the indebted amount for cancellations made within 1 (one) week or after commencement of the Course.

### 3.3 Execution

3.3.1 Contec will strive with best efforts to provide the Course in accordance with the published schedule but will not be liable if the Course must be canceled due to special circumstances. In such an event Contec will strive within reason to provide the Course or the remainder of the Course at a later time period. If this is not possible, previously paid Course fees will be reimbursed proportionally.

### 3.4 Private Courses

3.4.1 Private Courses are Courses provided exclusively for Customer in which only Customer participates. Private Courses can be provided at either the location of Customer or Contec.

3.4.2 Fees for private Courses depend on the number of participants. If the number of participants is more or less than the number of participants indicated in the offer, Contec has the right to increase or reduce the applicable fee.

3.4.3 In the event Courses are provided at Customer's location Customer must provide the necessary facilities and offices space in accordance with clause 1.6.6.

### 3.5 Refusal Participants

3.5.1 Contec reserves the right to refuse participants to a Course:

- a) if payments due have not been fully paid yet and/or on time before commencement of the Course;
- b) due to competitive reasons or other reasonable grounds for Contec.

### 3.6 Course material

3.6.1 All intellectual property rights, industrial property rights or other rights of Course material and/or other documentation will remain with Contec. Participants are explicitly not permitted to duplicate and/or transfer such to a third party (including colleagues who did not participate in the Course) for permanent or temporary use. Customer will ensure that its employees and/or third parties will comply to the foregoing

obligation

## 4. THIRD PARTY PRODUCTS

### 4.1 Third Party Products

4.1.1 Contec has the right to deliver Third Party Products or make use of Third Party Products in fulfilling its obligations flowing forth from the agreement. Contec is not responsible for Third Party Products, unless agreed upon otherwise in writing.

4.1.2 If Contec delivers Third Party Products to Customer, the Third Party General Conditions will be applicable to the agreement in addition to these General Conditions Contec.

4.1.3 Contec will deliver rights for Third Party Products under the same conditions as indicated in the Third Party General Conditions. With regard to Third Party Products delivered, Contec will provide:

- a) service under, at most, the same conditions as provided for in the Third Party General Conditions;
- b) the warranty under the same terms and conditions as indicated in the Third Party General Conditions.

4.1.5 Repair on Third Party Products:

- a) Under no circumstances will Third Party Products be replaced unless Customer makes an explicit request and pays all connected costs as an Advance.
- b) Operational costs will be applicable on all repairs. In the event that repairs take place outside of Contec's office, compensation for travel and waiting time and other related costs will be charged.

### 4.2 Third Party General Conditions

4.2.1 Third Party General Conditions that are declared applicable in these General Conditions Contec shall, when available to Contec, be provided on request. Third Party General Conditions will be delivered in the same format and language as received by Contec.

4.2.2 The General Conditions Contec have priority over Third Party General Conditions unless indicated otherwise. When there is conflict between the General Conditions Contec and Third Party General Conditions, Contec has the right to declare the conflicting terms of the Third Party General Conditions inapplicable or

applicable.

## 5. DELIVERY

### 5.1 Feasibility Study

5.1.1 A Feasibility Study is an investigation which can be carried out by Contec prior to delivery. The objective of the Feasibility Study is to inform Customer at an early stage as to the feasibility of the assignment.

5.1.2 Based on the findings of the Feasibility Study, Contec will provide a positive or negative delivery advice regarding the feasibility of the assignment. A positive delivery advice usually implies that Contec will then carry on with the delivery. A negative delivery advice implies that Contec will decline the delivery with cause and will provide an alternative where possible.

5.1.3 The costs of the Feasibility Study will always be borne by Customer regardless of the results of the Feasibility Study.

5.1.4 In the cost estimate for the project which Contec in principle includes in a Feasibility Study, an effort is made to provide the best possible hours and cost estimate based on the project scope, requirements and costs known and estimated at that time. No rights may be derived by the Customer from this estimate of hours and costs. The actual costs will always be charged to Customer on the basis of Subsequent Calculation based on actual time spent.

### 5.2 (Delivery) Dates

5.2.1 All (delivery) dates which may be named by and may be applicable to Contec are determined to the best of Contec's knowledge on the basis of information made known to Contec and will be taken into consideration as much as possible.

5.2.2 (Delivery) dates shall therefore not be considered to be absolute (delivery) dates within which must be delivered, but a time period within which Contec shall strive with best efforts to deliver the agreed upon items. If it is not possible to keep to the (delivery) date, then Contec and Customer will consult with each other to agree on a substitute (delivery) date.

5.2.3 Exceeding a given (delivery) date which may be applicable never constitutes an attributable shortcoming by Contec. Contec does not accept liability under any circumstances in cases where the (delivery) date may be exceeded.

### 5.3 Reservations

5.3.1 Contec shall commence execution of the agreement between Contec and Customer only

after a signed copy of the agreement drawn up by Contec has been received by Contec and/or having received timely payment of all amounts due in full. Should Contec commence execution of the agreement prior to receiving a signed copy of the agreement and/or having received timely payment of all amounts due in full, Contec reserves the right to suspend execution of the agreement pending receipt of a signed copy of the agreement and/or full payment of all amounts due.

5.3.2 Customer's rights, such as but not limited to the (possible) transfer (of ownership) of Products, are provided under the suspended condition that Customer timely pays the agreed compensations in full. In case of failure to pay, Customer must return the Products to Contec at Customer's expense within one week of receiving the instruction from Contec to do so. All other remedies in law remain applicable.

5.3.3 If Customer fabricates a new product, on the basis of the Products delivered by Contec, this will be done on behalf of Contec and Customer will keep the new product for Contec until all amounts due on the basis of the agreement have been paid on time and in full. Contec will maintain all the rights as owner of the new product until the moment payments have been made on time and in full.

### 5.4 Risk

5.4.1 From the moment of delivery Customer will bear the risk of the Products delivered even if possible ownership and user rights have not yet been transferred. Customer will therefore be held accountable for full payment of the Products delivered regardless of the destruction of or the decline in value of the Products delivered due to circumstances for which Contec cannot be held accountable.

5.4.2 The aforementioned will also be applicable from the moment in which Customer does not make it possible for Contec to make a delivery.

### 5.5 Evaluation Period Software

5.5.1 Contec may, at Contec's sole discretion, grant Customer an evaluation period for the Products. An evaluation period is only applicable, if such is confirmed by Contec in writing.

5.5.2 Unless agreed upon otherwise, the evaluation period will have a duration of 30 (thirty) days commencing upon delivery.

5.5.3 During the evaluation period Contec will have no obligations and/or responsibilities. Use of the Products during the evaluation period is at the



sole risk and expense of Customer.

**5.5.4** In the event Customer does not want to acquire the software Products, Customer must see to it that the:

- a) Products are removed from the systems on which they have been installed; and
- b) Back-ups and/or all other possible copies of the Products are deleted/destroyed.

**5.5.5** Customer agrees that in case of any breach of clause 5.5.4, Contec has the right, without further notification being required, to charge Customer the license fees and/or other fees then applicable if the Product were to be acquired after completion of the evaluation period, undiminished the right of Contec to claim full compensation for damages incurred.

**5.5.6** Data generated by Customer during the evaluation period will remain the property of Customer. It is Customer's sole responsibility to Back-up and/or transfer data to an alternative system prior to discontinuing use of the Products. Contec does not have any obligations with regard to the aforementioned data during the evaluation period or thereafter.

## **5.6 Evaluation Period Hardware**

**5.6.1** Contec may, at Contec's sole discretion, grant Customer an evaluation period for the hardware Products. An evaluation period is only applicable, if such is confirmed by Contec in writing.

**5.6.2** Unless agreed upon otherwise, the evaluation period will have a duration of 30 (thirty) days commencing upon delivery.

**5.6.3** The delivery of the hardware will be accounted for by Contec.

**5.6.4** Use of the hardware Products during the evaluation period is at the sole risk and expense of Customer. Customer guarantees to fulfill its duty of care and is bound to act as befits a good pater familias in the safekeeping and preservation of the hardware.

**5.6.5** Customer guarantees to verify and inspect the delivered hardware for visible and invisible defects and/or errors, immediately after the delivery. If any error and/or defect has been found, Customer will report the error and/or defect to Contec immediately.

**5.6.6** If any physical defect or damage occurs by wrong or careless use of the hardware by Customer, Contec is entitled to charge the costs to Customer at the sole discretion of Contec.

**5.6.7** In the event Customer does not want to acquire the hardware Products, Customer must see to

it that the hardware Products will be returned to Contec immediately after the evaluation period is ended.

**5.6.8** It is solely Customer's responsibility to return the hardware when the evaluation period is ended. The hardware will be returned at the expense of Customer and in the original package in which the hardware has been delivered to Customer.

**5.6.9** Customer agrees that in case of any breach of clause 5.6.8, Contec has the right, without further notification being required, to charge Customer the license fees and/or other fees then applicable if the hardware Product were to be acquired after completion of the evaluation period, undiminished the right of Contec to claim full compensation for damages incurred.

**5.6.10** In the event the hardware Product has not been received by Contec within 7 (seven) days after the evaluation period is ended, Contec is entitled to charge 50% of the purchase price of the hardware Product to Customer.

**5.6.11** In the event the hardware Product has not been received by Contec within 3 (three) weeks after the evaluation period is ended, Contec is entitled to charge the full purchase price of the hardware Product to Customer.

## **5.7 Delivery, Installation and Acceptance Procedure**

**5.7.1** Contec shall deliver the Products to Customer in accordance with the specifications established in writing by Contec and, if desired by Customer, install them.

**5.7.2** Delivery of the Products takes place when they are made available to Customer at Contec's warehouse. The costs for transport and possible insurance are for the account of Customer. The manner in which transport takes place is determined by Contec and insurance of the Products by Contec will not take place unless agreed upon otherwise in writing.

**5.7.3** The delivery of services by or through Contec takes place at the place and time that the services are performed.

**5.7.4** The Products shall be considered by both parties as accepted:

- a) upon delivery if there is no acceptance period applicable, or
- b) if an acceptance period is applicable, on the first day following the acceptance period, or
- c) when Contec, before the end of the



acceptance period, receives a Test Report (clause 5.8): at the moment that the Errors (clause 5.9) identified in that Test Report have been repaired, notwithstanding the presence of small Errors which according to clause 5.9.4 do not hinder acceptance.

- 5.7.5 If the Products are delivered and tested in phases and/or parts, the non-acceptance of a particular phase and/or part will not delay the acceptance of an earlier phase and/or another part.
- 5.7.6 Contrary to the preceding, the Products shall be considered as accepted if Customer uses the Products in any manner for productive or operational purposes before the moment of acceptance. The Products shall be considered as accepted from the beginning of any such use.

## 5.8 Test Report

- 5.8.1 If it becomes apparent during the acceptance period that the Products contain Errors, as described in clause 5.9, which hinder the progress of the acceptance test, Customer shall inform Contec no later than the last day of the acceptance period of the Errors in a written and as detailed as possible Test Report. In which case the still remaining acceptance period will be interrupted until such time as the Product is so modified that the Errors are repaired.

## 5.9 Errors

- 5.9.1 Error(s) means the failure to fulfill the functional specifications set down in writing by Contec and, in cases of developing custom work Contec Products, the functional specifications expressly agreed upon in writing. An Error only exists where such can be demonstrated and reproduced. Customer is required to immediately report possible Errors to Contec.
- 5.9.2 Every right to repair of Errors lapses if the Products provided by Contec are altered in any way or form.
- 5.9.3 The repair of Errors shall take place at the location to be determined by Contec. Contec is entitled to install temporary solutions, emergency solutions, detours and/or other problem-avoiding measures in the Products.
- 5.9.4 Acceptance of the Products may not be withheld on grounds other than those which are related to specifications which have been expressly agreed upon between the parties nor, furthermore, due to the presence of small Errors which do not reasonably impede putting the

Products into productive or operational use.

## 5.10 Replacement Performance

- 5.10.1 Contec is permitted to deliver alternative Products than those Products ordered by Customer if the performance and operation of such alternative Products is essentially no different from the Products ordered.
- 5.10.2 If the agreement is concluded with the objective of having activities carried out by a particular individual, Contec will be entitled to replace this person with another person with the same or similar qualifications.

## 5.11 Warranty

- 5.11.1 If the agreement between Contec and Customer concerns a software Product, Contec shall, for a period of 30 (thirty) days (Warranty period), commencing upon acceptance (if the moment of acceptance is unclear the date the agreement was entered into shall apply), strive to repair any Errors to the best of its ability, provided these Errors have been reported in detail in writing to Contec within the Warranty period. Contec, at Contec's sole discretion, is entitled at its expense to repair, modify or replace the Products.
- 5.11.2 If the agreement between Contec and Customer concerns a hardware Product, Contec shall, for a period of 1 (one) year (Warranty period), commencing upon acceptance (if the moment of acceptance is unclear the date the agreement was entered into shall apply), strive to repair any Errors to the best of its ability, provided these Errors have been reported in detail in writing to Contec within the Warranty period. Contec, at Contec's sole discretion, is entitled at its expense to repair, modify or replace the Products. Contec offers Customer upon entering into the agreement, the possibility to obtain additional warranty, support or Return Merchandise Authorization (RMA). Contec will not be obligated to provide any warranty to Customer, in the event Customer refrains from acquiring said additional services. In that event, only the standard warranty procedure provided by the manufacturer of the hardware Product is at the disposal of Customer.
- 5.11.3 Contec is entitled to invoice its usual prices and the costs for repair, modification or replacement of the Products if the Error is deemed to be caused by mistakes made by Customer, the result is of improper and non-careful use, the result is of other causes that may not be

attributed to Contec or if Customer could have reasonably detected the Error during the acceptance period.

- 5.11.4 The Warranty does not cover the reconstruction and/or repair of mutilated and/or lost data and/or information. Contec does not warrant that the Products shall function without interruption or without Errors, are suitable for every intended use of Customer and/or will lead to results desired by Customer during or after the Warranty period. The Warranty obligation is void if Customer alters the Products, or has them altered, without the written permission of Contec, as required in clause 2.1.4.
- 5.11.5 After termination of the Warranty period, Contec shall not be bound to repair, modify and/or replace the Products, unless parties have agreed otherwise.
- 5.11.6 The Warranty provided on Third Party Products is limited to the Third Party General Conditions as maintained by the supplier of Third Party Products as described in clause 4.

## 6. PRICES/PAYMENTS

### 6.1 Prices and Payments

- 6.1.1 All prices exclude VAT and other levies imposed by the government. The amounts invoiced to Customer will include applicable VAT and other levies possibly imposed by the government.
- 6.1.2 Contec will invoice the amount, appropriately itemized, owed by Customer on a monthly basis to Customer and/or other term indicated in the agreement. Customer will pay all amounts indebted within 20 (twenty) days of the invoice date. These payments will not be subject to compensation, suspension nor deduction. Objections to the invoice must be communicated to Contec in writing and with good arguments within 30 calendar days of the invoice date. In case of dispute of (a part of) the invoice, the Client is not obliged to pay that part of the compensation and / or the costs for which there is no agreement between the parties. The undisputed part must be paid in the manner and within the period as described in this clause.
- 6.1.3 Should Customer fail to fulfill any payment obligation, Customer is in breach without any further notification of breach being required. Contec reserves the right to charge all incurred costs to Customer (including costs due to legal assistance provided by a lawyer or authorized representative), including judicial and extra-

judicial expenses, with regard to the collection of debts from Customer. Extra-judicial collection costs amount to 15% of the debt, with a minimum of € 500 (five hundred euros) and at least in accordance with the Decree on Compensation for Extrajudicial Collection Costs.. In any case Customer will be charged (commercial) interest on a monthly basis, at the legal percentage rate increased with 3%, on all outstanding debts starting from the date of failure to pay.

- 6.1.4 Until full payment has been made, Contec has the right to suspend all services and obligations to Customer. Customer's obligation to meet Customer's commitments remains unchanged.

- 6.1.5 If Contec is unable to make a delivery in time due to Customer, Contec will have the right to charge a 1,5% interest reimbursement on a monthly basis over the indebted amount.

- 6.1.6 Compensation for Maintenance, Support and any other annual or periodic amounts are due as an Advance at the moment of realization of the agreement between the parties and shall be billed to Customer, appropriately itemized, prior to each year or other period that the agreement between parties continues.

- 6.1.7 The indebted amount in clause 6.1.1 may be increased with order costs, postage costs and costs of third parties. An increase can also take place in the event that activities have to take place outside of Contec's office. In the event that activities need to take place outside of Contec's office, hourly rates, travel and waiting time compensations, actual travel and/or kilometer compensation, hotel expenses and any other costs connected to such services will be charged. The means of transportation will be determined by Contec. The foregoing is also applicable on services provided outside of The Netherlands.

- 6.1.8 Above mentioned paragraphs leave all the legal rights of Contec unhindered, when Customer fails to meet Customer's commitments.

### 6.2 Price Changes

- 6.2.1 The Prices agreed to between Contec and Customer are among other things based on the costs of energy and salaries, social premiums, materials and travel and accommodation costs, etc., as well as the rate of exchange between the currencies as applicable at the time of closing the agreement. Contec is authorized, in case of changes to one or more of the cost items (for instance Third Party Products) and/or

changes in the rate of exchange, changes to the Consumer Price Indices (Consumentenprijsindices (CPI)) or the Service price index (DPI) J Information and communication CBS to adjust prices to these changes. At least every January Contec will increase its prices, based on the figures, published by CBS "Service price index (DPI) J Information and communication CBS", on January 1st (if necessary based on the figures of Q3). Changes will be rounded off upwards to a multiple of €2.50.

**6.2.2** Contec will offer Customer the possibility to become acquainted with possible changes in prices. If Customer does not agree with a price change, Customer will only be permitted to terminate the agreement from the date the change in price becomes applicable, if and as long as the total price increase during 1 (one) year exceeds the yearly inflation rate of the current year (or previous year for price increases announced for the next year) as published by the CBS (Dutch Bureau for Statistics) by 5%.

### **6.3 Fixed Price**

**6.3.1** In the case of a Fixed Price agreement, activities will be performed on the basis of a prior agreed upon price.

**6.3.2** Unless Contec can appeal to clause 1.6.4 extra hours will not be charged.

### **6.4 Subsequent Calculation**

**6.4.1** When charges are to be based on Subsequent Calculation, this means that prior to Contec commencing the agreed upon activities a global estimate can be made of the expected costs. On conclusion of the activities carried out, all costs actually incurred related to the activities will be calculated and charged. Customer is, then, aware that there is a possibility that the previously made estimate could be lower than the costs actually incurred. If no agreements have been made regarding billing, activities will be performed on the basis of Subsequent Calculation.

### **6.5 Advance**

**6.5.1** Contec has the right to charge payments in Advance. If full payment of the Advance is not made, Contec has the right, undiminished its other rights that may flow forth from the agreement, to suspend all its obligations and all amounts owed by Customer will be immediately

due.

## **7. INTELLECTUAL PROPERTY RIGHTS**

### **7.1 Rights of Customer and Contec**

**7.1.1** Contec has the exclusive right to further develop the Contec Products and place them at the disposal of third parties by means of licenses.

**7.1.2** Except where Third Party Products are concerned, all intellectual property rights, industrial property rights, and other rights resulting from all activities carried out by Contec, regardless of where and when carried out and regardless of whether it concerns the delivery of an existing Product or Product to be developed in the future, reside with Contec.

**7.1.3** Customer acknowledges that all present and future intellectual property rights, industrial property rights, other rights and the registration and/or application of the foregoing rights and/or similar rights for the whole term thereof and all renewals or extensions thereof, now or at any time in the future worldwide at all times shall be and are hereby assigned or will be transferred to Contec.

**7.1.4** Customer is not permitted to remove or alter any designation concerning intellectual property rights, industrial property rights, other rights, trademarks and trade names from the Products, or to have such changes made by third parties.

**7.1.5** The intellectual property rights, industrial property rights or other rights of a Product, or a part thereof, can only be transferred to Customer by means of a written deed, if Contec has these rights.

**7.1.6** In the event that Contec, Customer or a third party makes functional improvements or other adjustments in the Products the intellectual property rights, industrial property rights and other rights vested in the improved or adjusted Product will remain unchanged with Contec or the rightful third party. If the above mentioned rights do not belong to Contec or the rightful third party, Customer will cooperate in transferring the above mentioned rights to Contec or the rightful third party.

### **7.2 Indemnification**

**7.2.1** Contec shall protect Customer from any allegation to the effect that the Contec Products violate a copyright valid in The Netherlands. Contec shall pay the damages, expenses, and court costs that Customer is ordered to pay by

the final court ruling, provided that Customer:

- a) notifies Contec immediately, but no later than within 10 (ten) days after Customer becomes aware of the infringement or could have become aware of the infringement, in writing of the existence of the allegation of infringement; and
- b) gives the case completely over to Contec, including all negotiations and arrangements that might lead to a settlement.

In case of any such allegation or possible allegation, Contec reserves the right to obtain a license or sub-license on the Contec Product in question or to change or replace the Contec Product in such a way that the Contec Product will no longer infringe a copyright valid in The Netherlands. If, at Contec's sole discretion, the foregoing remedies are not a reasonable option, Contec has the right to take the delivered Contec Product back against reimbursement of payments made for the Contec Product in question, minus a reasonable compensation for having made use of the Contec Product.

**7.2.2** Contec shall not indemnify Customer against an action in the event that:

- a) such is based on the fact that the Third Party Products provided to Customer violate an intellectual property right, industrial property right or other right valid in the Netherlands or elsewhere;
- b) what has been provided by Customer is part of or is delivered in conjunction with a Product and this combination results in a violation of an intellectual property right, industrial property right, or other right valid in the Netherlands or elsewhere;
- c) Customer has made a change in or to the Product.

**7.2.3** If Contec and Customer agree that the intellectual property rights, industrial property rights or any other rights of a Contec Product, or a part thereof, will be transferred to Customer, Customer will indemnify Contec against any action insofar as such is based on the fact that the Product, or a part thereof, violates an intellectual property right, industrial property right or any other right belonging to a third party.