

1. Definitions and applicability

1.1 GOLIATH IT: GOLIATH IT Holding B.V. and her companies

Client: the party concluding an agreement with GOLIATH IT.

Assignment: a written document, forming part of an agreement between GOLIATH IT and the Client, outlining the agreement.

Schedule: schedule that forms part of an Assignment.

Chain issue: the set of problems which may arise when data processed by an information system is delivered by (part of) an information system which falls outside the scope of this agreement and/or delivered to (another) (part of) an information system which falls outside the scope of this present agreement.

1.2 These Conditions of GOLIATH IT apply to all offers and quotations of GOLIATH IT and all agreements concluded between GOLIATH IT and the Client.

1.3 In the event of conflict between the Assignment or any of the Schedules and these Conditions, the Assignment or the Schedule(s) shall prevail. In the event of a conflict between the Assignment and the Schedule, that which has been agreed most recently shall prevail.

1.4 Amendments of or supplements to these Conditions, Assignment or Schedule(s) may only be agreed in writing between the parties.

1.5 Should one or more provisions of these Conditions be null and void, the other provisions shall remain in force. The parties agree even at this time for future occurrence to consult each other about new provisions to replace the void provision(s) in such a way that their object and purpose is maintained as much as possible.

2. The performance of work

2.1 The services shall in principle be performed during the Client's working days, to wit Monday to Friday, inclusive. A working day shall be based upon eight hours, which may include day, evening or night hours. The exact number or working hours shall be specified in the Assignment.

2.2 Without the Client's permission, GOLIATH IT shall not be entitled to engage third parties for the performance of the agreement.

2.3 GOLIATH IT is responsible for obtaining all licences, registrations and approvals from government authorities that may be necessary for the proper performance by GOLIATH IT of its obligations under the agreement.

2.4 GOLIATH IT undertakes to conclude all the legally required insurance policies. The Client is entitled to require inspection of the insurance policy (policies).

2.5 If the Client has informed GOLIATH IT in writing that it objects to an employee of GOLIATH IT, GOLIATH IT shall have this employee replaced, if possible, within 20 days, after consultation with the Client, provided the objections are reasonable. The time required to familiarize the replacement with the work shall not be charged, with a maximum of 20 days one time only.

2.6 Should GOLIATH IT consider it necessary to replace one of its employees working for the Client, it shall be entitled to do so, unless the Assignment prohibits same. The time required to familiarize the employee with the work shall be for the account of GOLIATH IT.

2.7 In the event of incapacity for work of an employee of GOLIATH IT working for the Client, GOLIATH IT shall inform the Client of same immediately.

2.8 GOLIATH IT shall, as soon as possible after said notification, appoint a replacement. The time required to familiarize said replacement with the activities shall be for the account of GOLIATH IT.

2.9 Days off of employees of GOLIATH IT shall be determined by GOLIATH IT after consultation with the Client and taking into account the continuation of the activities.

2.10 GOLIATH IT shall perform all activities with the utmost care and in a professional manner on the basis of the obligation to make a professional effort. Any guarantee beyond this, including but not limited to guarantees regarding the suitability for a certain purpose and/or more far-reaching liability on the part of GOLIATH IT is excluded explicitly.

3. Regulations and instructions

3.1 GOLIATH IT shall ensure that its employees who are working for the Client during the Assignment, observe all statutory regulations and all rules and regulations applying to the employees of the Client.

3.2 GOLIATH IT and its employees shall observe the instructions of the Client insofar they fall within the scope of the Assignment.

4. Transfer clause

4.1 The parties shall not engage any employees of the other party, involved in the performance of the agreement, for the duration of the performance of the agreement and within one year after the termination of the assignment or have same work de facto within its own organization or a company affiliated with same via third parties without each other's mutual prior written approval.

4.2 In the event of violation of the aforesaid prohibition, the party in default shall forfeit to the other party a penalty of NLG 1,000 for each day that the violation continues, payable immediately without court intervention and without prejudice to the right of the claimant to recover the actual damage sustained.

5. Confidentiality

5.1 GOLIATH IT shall take all reasonable precautions in order to ensure that the information of a confidential nature regarding the business activities of the Client are kept secret. In particular, GOLIATH IT shall oblige its employees contractually to keep said information secret.

5.2 The aforesaid provision shall continue to be in force as long as and insofar as the confidential information has not: become part of the public domain or literature without any act of GOLIATH IT in the matter been made available to GOLIATH IT by a third party (other than on behalf of the Client), who legally possesses the information and has no duty of confidentiality vis-à-vis the Client.

5.3 All documents and/or goods made available for or in connection with the services rendered by GOLIATH IT shall continue to be the exclusive property of the Client. Said documents and/or goods and copies or transcripts of same shall be returned to the Client after the termination of the agreement on request.

6. Intellectual property

6.1 GOLIATH IT guarantees that the know-how of GOLIATH IT or its employees contributed under the agreement does not infringe on any intellectual property right applying in the Netherlands and/or abroad and that the use of same is not unlawful. It indemnifies the Client against claims of third parties regarding same.

6.2 If an injunction with final binding force is pronounced against the use by the Client of any application and/or system software and computer applications or part of same (hereinafter referred to as 'the Software') on account of any infringement, GOLIATH IT shall:

for its own account provide the Client with the right to continue to use the Software or – provided the Client agrees to same, which agreement the Client shall not deny on unreasonable grounds - replace same by non-litigious software, or change the challenged Software for its own account, to the effect that any use of same by the Client no longer constitutes infringement, on the understanding that replacement of the Software may not result in a reduced suitability if same;

or, in the event none of these alternatives can be reasonably performed:

compensate the Client for the normal reduction in the value of the Software.

6.3 In the absence of any express provisions regarding the intellectual and industrial property rights in regard of confidential information made available to GOLIATH IT pursuant to the agreement, the intellectual and industrial property rights regarding said information accrue to the Client.

6.4 Any reports, applications and/or system software and the computer applications prepared or developed for the Client pursuant to this Agreement, shall become the property of the Client. Immediately after terminating the Assignment, GOLIATH IT shall surrender to the Client all copies of the reports and Software, including any related documents.

6.5 All intellectual and industrial property rights ensuing from the agreement accrue to the Client. Upon request, GOLIATH IT shall cooperate in the acquisition by the Client of said rights.

6.6 In the absence of any express provisions regarding intellectual and industrial property rights for information used in the context of the agreement, the intellectual and industrial property rights for said information accrue to GOLIATH IT.

7. Imputable default

7.1 If GOLIATH IT defaults imputably in compliance with one or more of its obligations, it shall only be liable for damage on the part of the Client, in so far as it has been served immediate and written notice of default. Any notice of default must specify, in writing, the defect in as much detail as possible. Any notice of default shall include a reasonable term, within which GOLIATH IT will be able to perform its obligations after all, unless performance of the obligation in question is already permanently impossible.

7.2 The total liability of GOLIATH IT for direct damage in the event of an imputable default in the performance of the agreement shall in no event exceed the price agreed for such agreement (exclusive of VAT). The total compensation shall also not exceed an amount equal to the compensations (exclusive of VAT) for the work assigned during the period of one year immediately before the termination of the agreement. In addition, the total compensation for direct damage shall not amount to more than EUR 10,000 (ten thousand EURO) per event and in the event of period-related agreements, per event and per year.

Direct damage is defined as follows:

the reasonable costs incurred by the Client to have the performance of GOLIATH IT meet this agreement,

insofar as the agreement has not been rescinded;
costs of necessary alterations and/or changes in the equipment, programming, specifications, materials or documents, made to limit or repair direct damage as defined in these Conditions;
the costs incurred by the Client in being forced to continue the operation of its old systems and the related facilities, less any savings;
reasonable costs incurred to determine the cause of damage, the liability, the direct damage and the method used for the repairs.

7.3 In the event of damage due to death or physical injury or due to physical damage of goods, the total liability of GOLIATH IT shall not exceed EUR 20.000 (twenty thousand EURO) per event or series of related events.

7.4 For damage due to intent or gross negligence on the part of GOLIATH IT, the limitations of Articles 7.2 and 7.3 shall not apply.

7.5 Any liability of GOLIATH IT for indirect damage, including consequential loss, lost profits, lost savings and damage due to stagnation of business is excluded.

7.6 The entitlement to compensation shall only arise if the Client reports the damage to GOLIATH IT as soon as possible after it occurred.

7.7 Any forfeited contractual penalties shall be deducted from the compensation for the same event.

7.8 The Client indemnifies GOLIATH IT against all claims of third parties, under any name whatsoever, regarding services delivered by GOLIATH IT for the Client.

7.9 If, in accordance with Article 2.2 of these conditions, GOLIATH IT engages third parties to perform its activities and these third parties are imputably in default as to the performance of its activities, the liability of GOLIATH IT as regards the imputable default shall be limited to the compensation GOLIATH IT receives from said third party regarding the imputable default.

8. Force majeure

GOLIATH IT is not bound to observe any obligation if this is impossible on account of force majeure. Force majeure shall at any rate arise if GOLIATH IT cannot meet its obligations due to (civil) war, threat of war, nuclear reactions, riots, acts of war, fire, water damage, smoke damage, strikes, occupation of the premises, government measures, faults of equipment, power cuts and furthermore all causes for which GOLIATH IT cannot be blamed or which are beyond its sphere of risk and due to changes of the circumstances prevailing at the time the agreement was concluded.

9. Unlawful act

9.1 The Client shall not be liable for losses sustained by employees of GOLIATH IT due to or in connection with the performance of this agreement, or damage to their property nor for any injuries on their part (including mortal injuries). GOLIATH IT shall indemnify the Client against all claims against the Client on account of or in connection with such loss, damage or injury.

9.2 GOLIATH IT is liable for all loss of or damage to property and injury (including mortal injuries) sustained by the Client, its employees and third parties due to or in connection with the performance of the agreement. GOLIATH IT shall indemnify the Client against, and compensate, same in full for all claims on the Client on account of or in connection with such loss, damage or injury.

9.3 The total liability of GOLIATH IT under 9.2 is limited to EUR 10,000.

9.4 GOLIATH IT shall take out an insurance policy in connection with such risks.

9.5 GOLIATH IT shall in no event be liable for indirect or consequential damage caused in connection with the performance of the agreement.

10. Compensation

GOLIATH IT reserves the right to notify the Client of rate changes in writing, no later than one month before their effective date, stating the cause and manner of calculation. Price changes in the price shall be implemented in good faith.

11. Invoicing

11.1 Invoices shall be sent to the address indicated in the Assignment. Invoicing occurs on a monthly basis, in arrear. The net amount of the invoices shall be paid within thirty days after the date of the invoice. If the Client does not pay the amounts due within the agreed period, the Client shall owe interest in the amount of 1% per month over the outstanding sum, without notice of default being required, and GOLIATH IT shall be entitled to terminate the agreement. GOLIATH IT shall also be entitled to charge the judicial and extra-judicial costs, which is established to be at least 15% of the total amount.

11.2 All invoices shall be accompanied by a billing account initialled by the Client and other relevant documents pertaining to costs charged to the Client.

11.3 The Client shall make said initialled billing account and any other relevant documents available to GOLIATH IT within seven working days after the end of the month to which said initialled billing account

pertains. Failure on the part of the Client to observe this obligation shall entitle GOLIATH IT to send the invoice without said initialled billing account and other relevant documents.

11.4 In the event of dispute as to the entire invoice or any part of same, the undisputed part shall be paid.

11.5 The Client waives its rights to settlement.

12. Changes of address

GOLIATH IT and the Client shall inform each other immediately in writing of changes in the addresses and changes in respect of the contact person.

13. Audit

13.1 A chartered accountant to be designated by the Client at its own expense shall at all times be entitled to inspect the books and the administration of GOLIATH IT, insofar as same pertains to the activities indicated in the agreement. In this context, GOLIATH IT shall ensure and shall arrange that its sub-contractors ensure a correct custody of the aforesaid documents for a period of at least five years.

13.2 The chartered accountant of GOLIATH IT shall provide the Client every year on request, in the second quarter, with a statement pertaining to the preceding year, which shows that GOLIATH IT met its obligations by virtue of the Chain Liability Act.

14. Applicable law and competent court

14.1 Dutch law shall govern the agreements concluded with GOLIATH IT.

14.2 All disputes, with the exception of disputes which must be brought before the Cantonal Court, shall be heard exclusively by the District Court of The Hague.

14.3 However, GOLIATH IT shall be entitled to have a dispute with a foreign client heard by the competent foreign court.

15. Termination of the agreement

15.1 If the Client or GOLIATH IT wishes to terminate the activities, it must inform the other party of same in writing and by registered letter. In the event of termination, a period of notice of three months shall be observed.

15.2 Both parties are entitled to terminate the agreement immediately, without court intervention, without prior notice of default and without being bound to pay any compensation in the event that:

the other party applies for suspension of payments;

the bankruptcy of the other party has been filed, or if same is in a state of bankruptcy.

15.3 The termination or the rescission of the agreement does not release the parties from the provisions relating to:

Confidentiality;

Death/injury/damage to goods;

Intellectual property;

Applicable law and competent court.

Rent or loan of hardware

The following provisions apply if the Client has concluded an agreement for the rent of hardware or a loan agreement with respect to the hardware with GOLIATH IT for the services to be rendered by GOLIATH IT. Insofar as there are no deviations from same in this section, the provisions above under 'General' apply in full.

16. Equipment

16.1 In the agreement for the lease of hardware or the loan agreement with respect to hardware, the following shall be specified:

mark, type and serial number of the equipment;

number;

duration of the rent or loan;

rent per month;

notice period.

16.2 GOLIATH IT shall at all times be entitled to replace rented equipment or equipment on loan by the same or equivalent equipment.

16.3 The Client is bound to conduct itself with due care with respect to the equipment. No changes may be made to the equipment by or on behalf of the Client.

16.4 The Client must itself arrange the purchase of the necessary software and obtain any necessary licences.

16.5 The Client is not allowed to rent the equipment to a third party, or allow it to be used on loan.

17. Damage

17.1 As of the moment that the equipment is on the premises or in one of the buildings of the Client, the Client is liable for any damage to the equipment rented and/or on loan. The Client shall take out an insurance against said damage. GOLIATH IT is entitled to demand inspection of the insurance policies.

17.2 The Client is not liable for damage inflicted on the equipment by employees of GOLIATH IT.

17.3 If the equipment has been rendered unfit for use due to damage, GOLIATH IT shall replace it. The costs of replacement shall be borne by the liable party according to provisions 18.1 and 18.2. If replacement cannot be effected immediately, the Client shall not owe any rent for the period during which the equipment is not available. The provisions in 7.5 apply in full.

Program development

The following provisions apply if GOLIATH IT develops customized programs especially for the Client. Insofar as this section does not stipulate otherwise, the above provisions under 'General' shall apply in full.

18. Program development

18.1 Program development may include the following stages:

determining in cooperation with the Client the specifications and the functions which must be included in the programs

designing and writing programs on the basis of the functions referred to under 1;

testing and if need be correcting programs;

delivery.

18.2 Further data with respect to one or more of the aforesaid stages shall be included in Schedule(s).

18.3 The Assignment shall state the calculation method for charging the activities specified in the Schedule(s).

18.4 The Client shall at all times provide GOLIATH IT with all the data or information required or useful for the performance of the agreement.

18.5 If the data or information referred to in 19.4 are not made available to GOLIATH IT, not in good time or not in accordance with the agreements reached, or if the Client fails to meet its obligations in any other respect, GOLIATH IT shall be entitled to suspend the agreement and to charge any additional costs in accordance with the customary GOLIATH IT rates.

18.6 GOLIATH IT shall not proceed with any phase as referred to under 19.1 before the Client has approved the results of the preceding phase.

18.7 The Schedules shall include an estimate of the time required for each phase. The agreed periods are merely indicative and determined to the best of GOLIATH IT's knowledge. Any overrun of periods shall be reported by GOLIATH IT to the Client as soon as possible. GOLIATH IT is not bound to compensate any damage resulting from any period overruns.

19. Delivery

19.1 The programs shall be delivered in accordance with the specifications described in the Schedule. The programs shall be deemed to have been delivered when it has been made available ready for use.

19.2 If agreed between the parties in writing, the Client shall be entitled to test the programs during the days stated in the relevant schedule after it has been made available ready for use. If an acceptance test has been agreed, the programs shall be deemed to have been delivered the number of working days after the end of the test period as indicated in the relevant Schedule.

19.3 The Client shall inform GOLIATH IT in writing and in detail about any faults surfacing during the test period. The test period shall be suspended until the faults have been rectified. If it becomes apparent that the programs do not meet the specifications described in the Schedule, GOLIATH IT shall ensure repair within a reasonable period. If the programs have been developed for a fixed price, said repair shall be at the expense of GOLIATH IT.

20. Warranty

20.1 For a period of three months after delivery of the programs, GOLIATH IT shall, to the best of its ability, repair any hidden faults if the programs do not meet the specifications described in the Schedule and if such faults have been brought to the attention of GOLIATH IT in good time and in writing. GOLIATH IT does not warrant uninterrupted operation of the programs.

20.2 GOLIATH IT shall charge the costs of repair in the event that these are connected with mistakes on the part of the Client or if the faults could have been determined during the performance of the acceptance test.

20.3 The warranty does not cover the recovery of any lost data.

20.4 The warranty shall lapse if the programs are changed by parties other than GOLIATH IT.

20.5 At variance with the above provisions of these Conditions, GOLIATH IT warrants that the equipment has been designed Year 2000 proof. Should the programs nevertheless have any problems connected with the millennium issue, not caused by the chain issue, GOLIATH IT shall repair said faults of the equipment free of charge to the best of its ability, provided these faults have been made known in writing within three months after acceptance of the equipment, or the commencement of maintenance of the equipment, if same falls within three months after acceptance. Any additional warranty and/or liability of GOLIATH IT is explicitly excluded.

20.6 GOLIATH IT furthermore warrants with respect to the millennium issue that any agreed maintenance of the programs shall be performed professionally in a way that limits the date problems connected with the turn of the century. Should nevertheless any faults be detected after the maintenance has been performed and same has not been caused by the chain issue, GOLIATH IT shall repair the faults in the programs to the best of its ability and in accordance with the applicable maintenance provisions, provided these faults have been made known in writing within three months after the maintenance has been completed. Any additional warranty and/or liability of GOLIATH IT is explicitly excluded.

21. Rights to the developed programs

21.1 GOLIATH IT grants the Client the non-exclusive right to use the developed programs.

21.2 The Client is not allowed to apply the programs developed for the Client for application outside the own company or companies in which he has a majority interest, or have same applied in this way, without the written permission of GOLIATH IT.

21.3 In the event of violation of the provision in 22.2, the Client shall forfeit to GOLIATH IT an immediately exigible penalty sum equal to the costs involved in the development of the programs applied outside the own or affiliated company, without any court intervention being required.

21.4 Reports, application and/or system software and the computer applications made or developed for the Client pursuant to the agreement shall be transferred to the Client after termination of the Assignment, as shall any related documents.

21.5 Any goods delivered to the Client shall remain GOLIATH IT's property until all amounts due from the Client, on any grounds whatsoever, have been paid in full.

Right of use of standard package

The following provisions apply if GOLIATH IT has given the Client the right to use generally available programs, not designed specifically for a Client (standard package), also if the standard package has been changed or extended for the Client. The term program shall include the computer programs recorded on carriers which can be read by computers, and any related documents.

Insofar as this section does not state otherwise, the above provisions under 'General' shall apply in full.

22. Right of use

22.1 GOLIATH IT grants the Client only the non-exclusive right to use the standard package. The standard package may only be used by the Client on one processing unit. In the event of faults, the program may temporarily be used on a different processing unit.

22.2 Unless agreed otherwise, the Client is allowed to make a maximum of two copies of the standard package for reasons of security. These copies shall not be used by the Client, but shall only be used to replace the original material if same has become unfit for use, and shall be provided with the same labels and marks as the original material.

22.3 The rights of use may not be transferred to third parties without the written permission of GOLIATH IT. The Client may not sell the standard package, loan it to third parties, alienate it or use it as collateral. The Client may not change the standard package, give it to third parties for their use or use it for third parties. The source code of the programs will not be made available to the Client.

22.4 The Client shall immediately cease the use of the standard package upon termination of the agreement. In such an event, the Client shall return any copies in its possession to GOLIATH IT or destroy same.

23. Title and protection

23.1 All intellectual and industrial property rights connected with the package accrue to GOLIATH IT. The Client shall not remove any copyright indications.

23.2 In order to protect GOLIATH IT's rights, the Client shall ensure that the standard package is kept secret and not disclosed to third parties. The Client is aware that the standard package contains confidential information and business secrets of GOLIATH IT.

23.3 GOLIATH IT may take technical measures to protect the equipment.

24. Warranty

24.1 For a period of three months after delivery, GOLIATH IT shall repair any faults to the best of its ability if the programs do not meet the written specifications of the standard package (user manual).

24.2 GOLIATH IT may charge for the costs of repair in the event of errors in the use or other causes which cannot be attributed to GOLIATH IT. The warranty does not cover the recovery of any lost data. The warranty does not apply if the standard package has been changed by parties other than GOLIATH IT.

24.3 At variance with the above provisions, GOLIATH IT warrants that the equipment has been designed Year 2000 proof. Should the programs nevertheless have any problems connected with the millennium issue, not caused by the chain issue, GOLIATH IT shall repair the programs to the best of its ability, subject to the conditions of the right of use agreement concluded with respect to the programs. Any additional warranty and/or liability of GOLIATH IT is explicitly excluded.

25. Copyright guarantee

GOLIATH IT guarantees the payment of the costs the Client has been ordered to pay in proceedings based on the assertion that the standard package developed by GOLIATH IT infringes on a copyright applying in the Netherlands. The provisions of Article 7.4 apply in full.

If an action has been or may probably be instituted, GOLIATH IT may replace the standard package or change it in such a way as deemed proper by GOLIATH IT.

26. Maintenance

26.1 If a maintenance agreement has been concluded for the standard package or if a fee is paid for use, including maintenance, the Client shall inform GOLIATH IT of the faults detected in the programs in writing. GOLIATH IT shall repair any faults to the best of its ability if the programs do not meet the written specifications of the standard package (user manual). GOLIATH IT does not guarantee that the programs will work uninterrupted or that all faults will be removed.

26.2 GOLIATH IT shall charge for the costs of repair in the event of user errors of the Client or other causes that cannot be attributed to GOLIATH IT or if the programs are changed or maintained by parties other than GOLIATH IT. Maintenance does not include the recovery of any lost data.

26.3 If a maintenance agreement has been concluded, GOLIATH IT shall inform the Client of issues of improved versions of the standard package and inform it of any differences with the older version.

26.4 GOLIATH IT warrants with respect to the millennium issue that any maintenance of the programs shall be done professionally according to the provisions of the present maintenance agreement in a way which limits the date problems connected with the turn of the century. Any additional warranty and/or liability of GOLIATH IT is explicitly excluded.

27. Standard agreement of the supplier

If a supplier only grants the rights of use of a standard package in accordance with the conditions of its right of use or licence agreement, or if the maintenance is performed in accordance with the provisions of the maintenance agreement of the supplier, the provisions of said agreements apply, prevailing over Articles 23 to 27 inclusive of these General Terms, insofar as these are at variance with conditions of the supplier.