

**General Terms and Conditions of Sales and Delivery of Avit Systems BVBA**

These are the General Terms and Conditions of Sales and Delivery of Avit Systems, a private limited company with its registered office at Uitbreidingstraat 84/3, 2600 Antwerp, Belgium, and/or its affiliated companies (hereinafter "**Avit Systems**"), listed in the Register of Legal Entities of Antwerp under enterprise number BTW BE 0676.478.691. (hereinafter: the "**Conditions**").

**1 Applicability**

- 1.1 The Conditions shall exclusively apply to all our deliveries of goods and/or services, as well as to all offers and quotations made by us. All work shall only be carried out subject to the Conditions
- 1.2 Avit Systems does not agree to the applicability of any other general terms and conditions, irrespective of whether they are referred to in correspondence or sent to us.
- 1.3 If the party Avit Systems enters into an Agreement (as defined in article 3) with (hereinafter: the "**Client**") orders any goods or services, the Conditions shall be deemed to have been acknowledged and accepted by means of that order. Where necessary, acceptance of delivery by Avit Systems of any goods or services shall constitute the (repeated) express agreement to the Conditions.
- 1.4 Deviations from these Conditions shall only be valid if they have been confirmed in writing by the management of Avit Systems in the Assignment or Agreement (as defined below).

**2 Offers and quotations**

- 2.1 All offers and quotations shall be without obligation, unless they contain an acceptance term. If a quotation contains an offer with an acceptance term and this offer is

accepted by the Client, Avit Systems shall be entitled to revoke the offer within five working days following receipt of the acceptance. Quotations without an explicit acceptance term shall be valid for thirty calendar days after the date of the quotation.

- 2.2 All preliminary calculations and estimates issued by Avit Systems shall be indicative only, unless otherwise indicated in writing. The Client may never derive any rights or expectations from a preliminary calculation or estimate issued by Avit Systems. An available budget communicated to Avit Systems by the Client shall never be regarded as a (fixed) price agreed between the parties for the services to be provided by Avit Systems. Only if this has been agreed in writing between the parties shall Avit Systems be obliged to inform the Client if there is a risk of a pre-calculation or estimate issued by Avit Systems being exceeded.
- 2.3 If the quotation or a part thereof contains an obvious error or spelling mistake, Avit Systems cannot be held to it if the Client knows or should reasonably have understood that this is the case.
- 2.4 No rights may be derived from (verbal) announcements regarding the technical qualities of our products and delivery times. Dimensions and data included in drawings, images, catalogues, websites, quotations, advertising material, etc. shall not be binding on Avit Systems, unless explicitly stated.
- 2.5 Sending offers or documentation shall not oblige Avit Systems to enter into an Agreement.
- 2.6 The Client guarantees the accuracy and completeness of the dimensions, requirements, specifications of the performance and other documents and/or data on which Avit Systems based its offer and/or Agreement (partly or entirely), provided to Avit Systems by or on behalf of the Client.

### 3 Order confirmation and amendments to the Agreement

- 3.1 An agreement between the Client and Avit Systems (as defined below) is only concluded after we have confirmed the contents of this agreement in writing by sending a written order confirmation or confirmation of assignment. The Client is deemed to fully agree with the contents of this order or assignment confirmation, unless the Client has informed Avit Systems to the contrary by registered letter prior to performance of the agreement and within eight days after sending the order confirmation.
- 3.2 These Conditions, together with the specific provisions of the order or assignment confirmation, form the whole of the agreements made between the Client and Avit Systems (hereinafter: the "**Agreement**" or the "**Assignment**") and replace in full all - where applicable - agreements made previously or later (verbally or otherwise).
- 3.3 With respect to the services performed by Avit Systems and the related amounts owed by the Client, the relevant documents and data entered into the records or systems of Avit Systems constitute conclusive proof, without prejudice to the Client's right to provide evidence to the contrary.
- 3.4 The Assignment cannot be changed by the Client after commencement of the work unless Avit Systems agrees to this. In that case, the Client is obliged to reimburse Avit Systems for the costs arising from this change.
- 3.5 Further agreements, including if they concern (for example) verbal or written promises of employees of Avit Systems, shall only bind Avit Systems after and insofar as Avit Systems has confirmed these to the Client in writing.
- 3.6 If, in addition to the delivery of services or goods as set out in the Agreement, the Client requests Avit Systems' employees to perform additional work during the performance of the defined work or deliveries (on location), Avit Systems shall be entitled to charge the Client for such work and the Client shall be obliged to pay these costs.
- 3.7 Avit Systems and/or the employee concerned shall never be obliged to comply with such a request and may require that a separate agreement in respect of this be concluded (first). Avit Systems or the employee concerned shall furthermore only be obliged to perform the work or deliveries insofar as this can reasonably be expected of Avit Systems or the employee concerned and insofar as this, in their opinion, fits in with the other work. If another Avit Systems employee must be engaged to perform the additional work or the employee concerned must return at another time to do so, he shall notify the Client accordingly. The relevant work shall be confirmed in writing to the Client by (the employee concerned or another employee of) Avit Systems as soon as possible after receipt of the request to perform the additional work or deliveries. Where no separate agreement as referred to above is drawn up, the confirmation shall be regarded as an addition to the existing Assignment.
- 3.8 The Client accepts that any additional requests may have an impact on the arrangements laid down in the original Assignment (such as the time of delivery or completion of the service, etc.). Such additional work (or additional requests to that effect) and its impact on the previous agreements shall in no event constitute grounds for the Client to terminate or dissolve the Agreement.

3.9 Insofar as a fixed price has been agreed for the services, Avit Systems shall inform the Client in writing about the financial consequences of the extra work or services referred to in this article if the Client so requests.

#### 4 **Delivery**

4.1 Delivery takes place at a place and time to be determined by Avit Systems.

4.2 Delivery of goods takes place by handing over the goods, or the most important parts thereof, to the Client or its customer. From the moment of delivery to the Client, the delivered goods shall be at the expense and risk of the Client, who shall take care of these with due care and keep them as the recognisable property of Avit Systems until the day of full payment.

4.3 The risk of loss, theft of or damage to items, products, software or data covered by the Agreement shall pass to the Client when these items have been placed in the actual possession of the Client or an auxiliary person of the Client. Having taken actual possession of the goods is also assumed to exist once these goods have been temporarily stored at Avit Systems' premises or are staying there at the request of the Client or in anticipation or preparation of the agreed installation work.

4.4 Unless otherwise agreed in writing in advance, Avit Systems may send goods in parts, each shipment being separately payable. Specified delivery times are not considered deadlines. In the event of a change in the content or scope of the Agreement (additional work, change in specifications, etc.) or a change in the approach to the performance of the Agreement, new, adjusted terms shall be agreed. If there is a risk of any term being exceeded, Avit Systems and the Client shall enter into

consultations to discuss the consequences of such exceeding for further planning.

4.5 If the goods are (temporarily or first) stored at Avit Systems at the request of the Client, the actual transport costs will be charged to the Client and, if the goods remain stored at Avit Systems for more than 2 weeks, from the moment of delivery to Avit Systems, a storage fee amounting to 1% of the value of the goods (as stated on the invoice or in the Agreement) shall be charged for each month (or part thereof).

4.6 The risk of loss, theft or waste of the goods shall be entirely for the Client from the moment of delivery. If the Client so wishes, it must take out its own insurance for the goods during the period that they are temporarily stored at Avit Systems (as referred to in the second sentence of the previous article 4.5).

4.7 If Avit Systems provides the Client with samples, the Client is obliged to return the samples to Avit Systems, free of charge, undamaged and in original packaging, within fourteen days of receipt. If Avit Systems shows or provides a model, sample or example, this shall only be done as an indication: the qualities of the goods to be delivered may differ from the sample, model or example.

4.8 The agreed delivery time shall commence at the time specified in the Agreement. This may include one of the following times:

- a) the day of the conclusion of the Agreement;
- b) the day of receipt by Avit Systems of the information to be provided by the Client, which is necessary for the performance of the Agreement;
- c) the day of receipt by Avit Systems of that which, under the Agreement, the Client may be required to pay in advance.

- 4.9 The mere exceeding of a (delivery) term or (delivery) date, whether or not final, specified by Avit Systems or agreed between the parties, does not immediately render Avit Systems in default. In all cases - therefore also in the event that the parties have explicitly agreed in writing on a final (delivery) term or (delivery) date - Avit Systems shall be in default on account of the delivery period being exceeded, but only after the Client has given written notice of default to Avit Systems and Avit Systems has left this notice of default unanswered for more than 15 days from receipt. The notice of default must contain the most complete and detailed description possible of the failure, allowing Avit Systems to respond adequately.
- 4.10 The Conditions, as well as the further (specific) conditions set out in the Agreement, also apply to the provision of services. Services may be provided on an occasional basis, in the form of a maintenance contract (using the "strippenkaart" system as referred to in article 7.6 et seq. or otherwise), on a project basis, or in such other form as is laid down in an Agreement between the parties. In all cases, the provision of services may be combined with the delivery of goods as referred to above. In addition to the provisions relating to the delivery of services, the provisions relating to the delivery of goods shall also apply to the latter delivery. In the event of conflicting provisions, the (deviating) provisions from the Agreement shall prevail.
- 5 Retention of title**
- 5.1 The ownership of any goods delivered by Avit Systems shall not pass to the Client until the purchase price for the relevant goods has been received in full by Avit Systems and any other conditions laid down in the Agreement have been met by the Client. Claims of Avit Systems against the Client for compensation due to a shortcoming in the performance of the Agreement are also included.
- 5.2 If the Client forms a new item (partly) from items delivered by Avit Systems, the Client shall form that item only for Avit Systems and the Client shall hold the newly formed item for Avit Systems until the Client has paid all amounts due under the Agreement; in that case, Avit Systems shall remain the owner of the newly formed item until the Client has paid in full.
- 5.3 Retention of title shall apply in the same manner insofar as the Client fails to pay the fee for the provision of services or work related to the relevant goods, except where explicitly provided otherwise in the Agreement.
- 5.4 The property law consequences of the retention of title of an item intended for export are governed by the law of the state of destination if that law contains more favourable provisions for Avit Systems.
- 5.5 Avit Systems may retain the items, products, property rights, data, documents, software, data files and (interim) results of its own services received or generated within the scope of the Agreement, despite an existing obligation to issue or transfer, until the Client has paid all amounts due to Avit Systems.
- 5.6 As long as the ownership of any goods delivered by Avit Systems has not passed to the Client, the Client may not encumber the goods with any (limited) right.
- 5.7 If the Client fails to fulfil its payment obligations towards Avit Systems or Avit Systems has good reason to fear that the Client will fail in its obligations, Avit Systems shall be entitled to repossess the goods delivered to the Client (which shall always be subject to retention of title until the Client has fully fulfilled its obligations under the Agreement) at the expense of the Client. Following repossession, the Client shall be credited for the

market value, which under no circumstances may be higher than the original purchase price, less the costs associated with the repossession.

## 6 Prices

6.1 Unless otherwise stated, the prices are net cash based on delivery ex works, warehouse or other (storage) location, and:

- a) exclusive of VAT, import duties, taxes and/or other duties or levies that have been or will be imposed by the government;
- b) excluding the costs of storage, packaging, loading/unloading, exchange rates, insurance and transport to the address provided by the Client insofar as this is within Belgium;
- c) excluding exchange rate changes insofar as they have an impact on the original quotation;
- d) without discount; and
- e) stated in euro amounts.

The costs arising from the principles referred to under a), b) and c) above shall be passed on to the Client. Article 6.3 shall not apply in this respect.

- 6.2 If:
- (a) delivery of goods takes place at a time that is more than 4 weeks after the date of the quotation; or
  - (b) the cost price of the goods to be delivered has risen since the date of the quotation (for example, as a result of an increase in the prices for raw materials, wages, etc.)

Avit Systems shall be entitled, even if a fixed price has been agreed, to charge the price applicable at the time of delivery, according to the current price lists. All quotations shall be made subject to this change in price.

6.3 If the total price increase as referred to in article 6.1 is more than 10%, the Client shall have the right to dissolve the Agreement (only for the part not yet performed), unless Avit Systems indicates within two working days after receipt of the notice of dissolution that it still wishes to fulfil the Agreement at the originally quoted price.

6.4 If there is a periodic payment obligation, Avit Systems shall be entitled, after expiry of at least one full Agreement year (12 months), to increase the rates and/or prices for that new calendar year annually (from 1 January of each calendar year) based on the Dutch CBS index for business services.

6.5 A minimum commitment of 4 hours shall be charged for work on location, even if the time actually spent is less than 4 hours. For remote work, a minimum commitment of 2 hours applies. Where the actual amount of time spent exceeds 4 or as the case may be 2 hours, the actual number of hours shall be charged.

6.6 Outside office hours, the following surcharges to the standard hourly rate apply:

- a) 50% surcharge for hours between 18.00 - 00.00 hours;
- b) 100% surcharge for hours between 00.00 - 08.00 hours;
- c) 100% surcharge for hours on Saturdays, Sundays, and public holidays.

## 7 Invoicing

7.1 Goods shall be invoiced in accordance with the provisions of articles 6.1 to 6.3 inclusive.

7.2 Services shall be invoiced monthly on the basis of actual costs in accordance with the provisions of articles 6.1, and 6.3 to 6.6 inclusive.

7.3 When providing services, Avit Systems may also invoice on the basis of a fixed price agreement made with the Client. In this case, the Client must pay 50% of the total



- invoice upon issuing the Assignment. If, as part of the Assignment, goods are also delivered, the same shall apply. After delivery or installation of the goods at the Client (and/or temporary storage at Avit Systems) and as soon as more than 50% of the total hours/time to be spent on the Assignment has been spent, 40% of the total amount will be invoiced. The remaining 10% will be invoiced immediately upon completion of the project. Depending on (in particular) the scope and duration of the project, deviating percentages may be agreed in writing in special cases.
- 7.4 Any additional work will be invoiced separately in accordance with the above provisions.
- 7.5 In the case of periodic services, monthly invoices shall be issued in advance (for example for cloud services, telephony, connections, lines, etc.), with the exception of variable costs (call and/or data costs), which shall be invoiced monthly in arrears on the basis of usage.
- 7.6 All maintenance agreements shall be invoiced annually in advance. If the so-called Avit Systems "strippenkaart" (ticket strip) is used (for the performance of support work at a fixed rate or other work as laid down in an Agreement), the Client shall be charged an amount for the first (Agreement) period based on the expected work and subsequently annually an amount based on the actual usage during the previous period. If Avit Systems observes that the actual usage during the following period is higher than the amount for the expired period, the fee for the coming period will be increased to an amount that, assuming the same scope of work for the coming period, corresponds to the expected work. If Avit Systems observes that the actual usage is lower than the amount already invoiced, the new strippenkaart amount will be reduced according to the specified method, so that it corresponds to the expected work for the coming period, taking into account the following: if the actual usage is less than 25% of the invoiced amount, 25% of the strippenkaart amount will nevertheless be deducted (annually) from the strippenkaart per Agreement period until the balance is exhausted.
- 7.7 If the strippenkaart budget within an Agreement period is completely exhausted before the end of that period, Avit Systems will send a new invoice, immediately after reaching a zero balance, for the remaining part of that period and/or for the coming period to supplement the last strippenkaart, which invoice will be based on the amount of work performed in the period for which the strippenkaart has been exhausted. If the Client does not complain within five working days after sending the new invoice, the invoiced amount shall be due. If the Client does complain, but no agreement is reached between the parties on the amount to be invoiced within one month after invoicing, Avit Systems shall be entitled to immediately cease all work until full payment of the new invoiced amount. In that case, all costs and damage resulting from this discontinuation shall be exclusively for the account of the Client.
- 7.8 Unless otherwise agreed, all (other) services shall be offered and performed on the basis of actual costs. This shall also apply to work that is performed in addition to previously agreed work (as referred to in article 3.6 et seq.).
- 7.9 All monthly invoicing shall be based on direct debit. If the authorisation is withdrawn by the Client prior to termination of the Assignment or Agreement and the associated work or deliveries, Avit Systems shall have the right to immediately cease all work and deliveries. Any damage resulting from this for the Client (or

third parties) shall be entirely at the expense and risk of the Client.

## **8 Payment**

- 8.1 All payments are due without discount and without any deduction. In the case of payment by bank transfer, the day of crediting Avit Systems' account shall be considered the day of payment.
- 8.2 The period for lodging a complaint against an invoice expires 15 days after the invoice date, without prejudice to article 7.7 of the Conditions. Any complaint must always be made by registered letter to Avit Systems.
- 8.3 Any invoice that is not paid within a period of 30 days after the invoice date shall automatically and without notice of default result in:
- interest on arrears of 10% per year being due, counting from the invoice date until the date of full payment;
  - compensation being due, which is fixed at 10% of the outstanding invoice, with a minimum of 150 euro;
  - all other outstanding invoices becoming immediately due and payable.
- 8.4 Without the written consent of Avit Systems, the Client is not entitled to a setoff or suspension of compliance with its payment obligations.
- 8.5 Payment shall in the first instance be allocated to the payment of collection costs, then to the compensation due, then to the interest due, and then to the principal sum. If the Client fails to pay more than one invoice, a payment shall, subject to the provisions of the previous sentence, first be deducted from the oldest invoice and then from the second oldest invoice, and so forth.
- 8.6 If Avit Systems has sent the Client an advance invoice pertaining to the Assignment, this invoice must have been paid before the date on which the work is scheduled to commence. If Avit Systems does

not receive the advance payment on time, Avit Systems shall have the right to suspend the commencement of the work or the delivery of the goods until payment has been made.

- 8.7 Furthermore, if the Client does not, not timely or not properly fulfil its obligations under the Agreement, Avit Systems shall have, where possible cumulatively, the right to both total or partial (extrajudicial) dissolution of that Agreement and, if applicable, all other current Agreements, without Avit Systems being obliged to pay any compensation, as compensation for the damage suffered by Avit Systems.
- 8.8 The above does not affect Avit Systems' right to charge all other costs, damage, and interest.

## **9 Cancellation**

- 9.1 If the Client wishes to cancel an Agreement for the delivery of goods and/or services after it has been concluded, but before delivery and/or performance has commenced, the Client must pay cancellation costs equal to 20% of the agreed price (plus VAT).
- 9.2 With respect to projects as referred to in article 7.3, if the Client postpones the Assignment prior to commencement of the project, the Client shall nevertheless owe part or all of the agreed price (plus VAT) for this project as compensation for Avit Systems keeping capacity available for the Assignment. This compensation is calculated per scheduled FTE and is as follows:
- a) in the case of postponement within 24 hours prior to commencement of the project: 100% of the agreed hourly rate per FTE with a maximum of 24 hours;
  - b) in the case of postponement between 3 days and 24 hours prior to commencement of the project: 75% of the agreed

- hourly rate per FTE with a maximum of 24 hours;
- c) in the case of postponement between 1 week and 3 days prior to commencement of the project: 50% of the agreed hourly rate per FTE with a maximum of 24 hours;
- d) in the case of postponement between 2 weeks and 1 week prior to commencement of the project: 25% of the agreed hourly rate per FTE with a maximum of 24 hours;
- Depending on (in particular) the scope and duration of the project, deviating percentages may be agreed in writing in special cases.
- 9.3 In the event of termination of an Agreement relating to the performance of projects as referred to in article 9.2 due to non-performance (in accordance with article 10.1), which in any case shall mean the situation that the Client has failed to fulfil or timely fulfil its payment obligation prior to commencement of the project or refuses delivery of the agreed goods, the Client shall still be obliged to pay Avit Systems 50% of the agreed price for this project (where it has not already done so) as compensation for this termination. Any loss incurred by the Client as a result of such termination shall be entirely at the expense and risk of the Client.
- 9.4 The provisions of this article 9 shall apply without prejudice to Avit Systems' right to claim full compensation, including lost profits.
- 10 Dissolution and termination**
- 10.1 Each of the parties shall only be entitled to dissolve the Agreement on account of an attributable failure in the performance of the Agreement if the other party, in all cases following a written notice of default that is as detailed as possible and that includes a reasonable term for remedying the failure, fails imputably in the performance of essential obligations under the Agreement. Payment obligations of the Client and all other obligations to cooperate for the Client or a third party to be engaged by the Client shall at all times be considered essential obligations under the Agreement.
- 10.2 If, at the time of the dissolution referred to in article 10.1, the Client has already received services in performance of the Agreement, the dissolution will not affect these services and the related payment obligation, unless the Client proves that Avit Systems is in default with respect to the essential part of these services. Amounts that Avit Systems has invoiced prior to the dissolution in connection with what has already been performed or delivered in the performance of the Agreement shall remain payable in full, subject to the provisions of the previous sentence, and shall become immediately due and payable upon dissolution.
- 10.3 If an Agreement which by its nature and content does not end in completion has been entered into for an indefinite period, this agreement may be cancelled in writing by each of the parties, with due observance of a notice period of three months. Under no circumstances shall the parties be obliged to pay any compensation for termination other than that laid down in these Conditions.
- 10.4 Under no circumstances shall the Client be entitled to prematurely terminate an agreement for services or an assignment that has been entered into for a definite period of time.
- 10.5 Either party may terminate the Agreement in whole or in part with immediate effect in writing without notice of default if:
- a) the other party is declared bankrupt, assigns its assets, requests protection against its creditors pursuant to the



Continuity of Enterprises Act of 31 January 2009 or pursuant to Book XX of the Belgian Code of Economic Law, or all or part of its property is attached;

- b) the other party dies or is placed under guardianship;
  - c) the other party's company is liquidated or terminated (other than for the purpose of a merger of companies).
- 10.6 If:
- a) the other party is subject to a change of control,
  - b) the other party fails to pay an invoice amount or a part thereof within the term set and has not yet remedied this default within a reasonable term set by Avit Systems for this purpose,
- Avit Systems shall have the right, by the mere occurrence of one of the aforementioned circumstances, either to dissolve the Agreement extrajudicially or to claim in full any amount owed by the Client on the basis of work performed by Avit Systems, immediately and without any warning or notice of default being required, all without prejudice to its right to compensation of costs, damage, and interest. The Client indemnifies Avit Systems against claims from third parties arising from or related to the dissolution referred to in the previous sentence.

## 11 Liability

11.1 Any liability of Avit Systems for attributable failure in the performance of the Agreement or for any other reason, including the obligations referred to in article 14 (warranty), shall be limited to the total order amount or the amount actually paid out by Avit Systems' insurer in the relevant case. This limitation of liability shall apply by analogy to the indemnities provided by Avit Systems to the Client in these Conditions. If the Agreement is mainly a continuing performance

agreement with a term of more than one year, the order amount shall be set at the total of the fees (excluding VAT) paid by the Client in the 12 months immediately prior to the attributable failure.

- 11.2 Under no circumstances shall Avit Systems' total liability for direct damage, for whatever reason, exceed EUR 500,000 (five hundred thousand euro).
- 11.3 The liability of Avit Systems for damage caused by death, bodily injury or material damage to property shall never exceed EUR 1,250,000 (one million two hundred and fifty thousand euro).
- 11.4 The liability of Avit Systems for indirect damage, consequential damage, lost profits, lost savings, reduced goodwill, loss due to business interruption, damage as a result of claims from customers of the Client, damage related to the use of goods, materials or software of third parties prescribed by the Client to Avit Systems, and damage related to the use of suppliers prescribed by the Client to Avit Systems is excluded. Liability of Avit Systems for mutilation, destruction, or loss of data or documents is also excluded.
- 11.5 Furthermore, Avit Systems is not liable:
  - a) for damage to items of the Client and third parties that Avit Systems had in its possession in the context of the delivery;
  - b) for damage the Client suffers as a result of the actions of third parties (such as hackers) who, using for example the (ICT) facilities that Avit Systems installs or has installed on behalf of the Client, seek access or obtain access to property and/or information of the Client;
  - c) for damage suffered by the Client as a result of force majeure on the part of Avit Systems;

- d) for damage the Client could have prevented by checking the correctness of the delivery and the soundness of the delivered goods before putting them into use.
- 11.6 Unless performance by Avit Systems is permanently impossible, Avit Systems' liability for attributable failure to comply with an Agreement only arises if the Client gives Avit Systems written notice of default without delay and Avit Systems continues to fail to comply with its obligations, even after a reasonable period of time. The notice of default must contain the most complete and detailed description possible of the failure, allowing Avit Systems to respond adequately.
- 11.7 Any right to compensation is conditional upon the Client notifying Avit Systems in writing as soon as possible after the loss arises. Any claim for compensation against Avit Systems shall expire by the mere lapse of twenty-four months after the claim arose.
- 11.8 The Client indemnifies Avit Systems against all claims by third parties for product liability as a result of a defect in a product or system that was delivered by the Client to a third party and that also consisted of equipment, software or other materials supplied by Avit Systems, unless and insofar as the Client proves that the damage was caused by that equipment, software or other materials.
- 11.9 The provisions of this article, as well as all other limitations and exclusions of liability stated in these Conditions, shall also apply to all (legal) persons engaged by Avit Systems in the performance of the Agreement.
- 12 Force Majeure**
- 12.1 Avit Systems is not obliged to fulfil any obligation, including any warranty obligation agreed between the parties, if it is prevented from doing so as a result of force majeure. Force Majeure is defined as: (i) force majeure of suppliers of Avit Systems, (ii) failure to properly fulfil obligations of suppliers prescribed by the Client to Avit Systems, (iii) defective goods, equipment, software or materials of third parties, the use of which is prescribed by the Client to Avit Systems, (iv) government measures, (v) power outage, (vi) failure of the Internet, computer network or telecommunication facilities, (vii) war, (viii) sit-downs, (ix) strike, (x) general transport problems.
- 12.2 If in the opinion of Avit Systems the force majeure will be of a temporary nature, Avit Systems shall have the right to temporarily suspend the performance of the Agreement until the circumstance that causes the force majeure no longer exists.
- 12.3 If in the opinion of Avit Systems, the force majeure situation is of a permanent nature, the parties shall make arrangements for the total or partial termination of the Agreement and the associated consequences. In any case, a force majeure situation of a permanent nature shall be assumed to exist if the force majeure continues for more than 90 days. In that case, Avit Systems shall have the right to dissolve the Agreement in writing in whole or in part.
- 12.4 Avit Systems shall be entitled to demand payment for all work performed under the agreement prior to the occurrence of the circumstance giving rise to force majeure. In that case, any work already performed on the basis of the Agreement shall be settled proportionately, without the parties owing each other anything else.
- 12.5 The party that believes it is in a situation of force majeure must immediately inform the other party thereof by registered letter.
- 12.1 Avit Systems is not obliged to fulfil any obligation, including any warranty obligation agreed

### **13 Intellectual or industrial property rights**

- 13.1 All intellectual or industrial property rights to the software, websites, data files, equipment or other materials developed or made available to the Client under the Agreement, such as analyses, designs, documentation, reports, quotations, as well as preparatory material thereof, shall exclusively be vested in Avit Systems, its licensors, or its suppliers. The Client only acquires the rights of use that arise from the Conditions, or from the terms and conditions of its licensors and/or its suppliers or manufacturers, in addition to the rights that already accrue to the Client under the law. The Client is obliged to refrain from any other or more extensive right, including the reproduction of software, websites, data files or other materials.
- 13.2 If the parties agree in writing that an intellectual property right in respect of software, websites, databases, equipment or other materials specifically developed for the Client will be transferred to the Client, this shall not affect Avit Systems' right or ability to use and/or exploit the components, general principles, ideas, designs, algorithms, documentation, works, programming languages, protocols, standards and the like underlying that development for other purposes, either for itself or for third parties, without any restriction. Nor shall the transfer of intellectual property rights affect Avit Systems' right to undertake developments, for itself or third parties, which are similar to or derived from those made or to be made for the benefit of the Client.
- 13.3 A right or right of use to which the Client is entitled is non-exclusive and non-transferable to third parties and ends immediately upon termination of the Agreement (unless explicitly agreed otherwise with respect to specific rights) and in the event of default on the part of the Client, if the Client fails to rectify it within a reasonable period set by Avit Systems.
- 13.4 The Client is not permitted to remove or change any indication concerning the confidential nature or copyright, trademarks, trade names or other intellectual or industrial property rights from the software, websites, databases, equipment, or materials.
- 13.5 Even if the Agreement does not explicitly provide for such authority, Avit Systems shall be entitled to take technical measures in order to protect the software, hardware, data files, websites and suchlike on account of an agreed restriction on the content or duration of the right to use these objects. The Client is never permitted to (order to) remove or to (order to) circumvent such a technical provision.
- 13.6 Avit Systems indemnifies the Client against any legal claim by a third party based on the allegation that software, websites, databases, equipment or other materials developed by Avit Systems infringe an intellectual property right of that third party, provided that the Client shall forthwith inform Avit Systems in writing about the existence and substance of the legal claim and leave the handling of the case entirely to Avit Systems, including the making of any settlements. For that purpose the Client shall give Avit Systems the powers of attorney, information and cooperation necessary to defend itself against such legal claims, if necessary in the Client's name. This obligation to indemnify shall cease to exist if and insofar as the infringement concerned relates to (i) materials made available to Avit Systems by the Client for use, adaptation, processing or incorporation, or (ii) to changes that the Client has made to the software, website, data files, equipment or other materials or has had such changes carried out by a third party without Avit Systems'

written consent. In the event that it is judicially and irrevocably established that the software, equipment or materials developed by Avit Systems itself infringe(s) any intellectual property right belonging to any third party or that in Avit Systems' opinion there is a reasonable chance that such infringement may occur, Avit Systems shall, where possible, ensure that the Client is able to continue to use the product(s) supplied or some other, functionally equivalent software, equipment or materials. Any other or further liability or obligation to indemnify on the part of Avit Systems is excluded.

- 13.7 The Client guarantees that no rights of third parties prevent provision to Avit Systems of any equipment, software, materials intended for websites (images, text, music, domain names, logos, hyperlinks, etc.), data files or other materials, including design materials, for the purpose of use, processing, installation or incorporation (e.g. into a website). The Client indemnifies Avit Systems against any claim from a third party based on the allegation that such provision, use, adaptation, installation or incorporation infringes any right of that third party.

## **14 Warranty and Objection**

- 14.1 With respect to goods of third parties (suppliers) that are delivered to the Client by or via Avit Systems (which in any case includes both hardware and software), the Client shall only be entitled to warranty insofar as this exists on the basis of the warranty or objection of the relevant supplier, or on the basis of the conditions applicable between Avit Systems and the relevant supplier. Therefore, Avit Systems itself does not grant the Client any warranty of its own, but, where applicable, only passes on to the Client, as far as possible, the rights it can exercise against the relevant suppliers. From the moment of full payment by the Client of the amount due for the Assignment, all rights that Avit Systems can exercise against its suppliers (and/or any other parties) in respect of the delivery of those goods are transferred in full to the Client, without any further action being required. Insofar as further actions are required, Avit Systems shall, at the first request of the Client, provide all cooperation that can reasonably be required of it.
- 14.2 Avit Systems shall provide the Client with all relevant information, allowing the Client to independently exercise its rights against the relevant suppliers. Unless otherwise agreed, the Client shall immediately contact the suppliers of Avit Systems when invoking the aforementioned warranty. Where possible, Avit Systems shall assist the Client and/or Avit Systems shall act as an intermediary in invoking the aforementioned warranty.
- 14.3 At the request of the Client and in consultation with Avit Systems' suppliers, Avit Systems is prepared in specific cases to provide or assist (as additional work) with the repair and/or adaptation of certain hardware and/or software (originating from suppliers) in its own workshop or by partially or completely replacing and/or adapting the delivered goods on location.
- 14.4 Avit Systems guarantees the Client that Avit Systems shall provide its services in accordance with the conditions laid down in the Agreement.
- 14.5 With respect to software developed by Avit Systems (the ownership and/or other relevant rights of use of which are vested in Avit Systems) Avit Systems guarantees that the Client obtains a right of use for the duration of the Agreement or as

- much longer as stipulated in the Agreement.
- 14.6 Any warranty obligation under Avit Systems shall expire:
- a) if the observed defects are the result of incorrect, careless or incompetent use or are the result of any cause other than the defectiveness of the material or manufacture;
  - b) for so-called 'do-it-yourself' packages and articles packed as such;
  - c) with respect to used goods and materials;
  - d) if the Client carries out or causes to carry out modifications and/or repairs to the delivered product on its own initiative during the warranty period;
  - e) in respect of defects that are wholly or partly the result of any government regulation concerning the nature or quality of the materials used; and
  - f) if the faults have occurred as a result of lightning, fire or water damage, or because of other external causes or calamities.
- 14.7 For each delivery of goods, the Client is obliged to immediately and independently check whether the delivered materials comply with the Agreement. The Client must specify visible defects on the consignment note or communicate these to Avit Systems immediately after receipt of the goods. Objections must be made in writing within fourteen calendar days after receipt of the goods. After this period has been exceeded, all possible claims shall lapse and the buyer shall be deemed to have accepted the delivered goods.
- 14.8 Unless otherwise agreed, Avit Systems shall only be obliged to fulfil any warranty obligations with respect to materials and/or services delivered within Belgium.
- 14.9 Where Avit Systems provides a warranty, it accepts no further obligation(s) than - at its discretion - replacing, crediting and/or repairing the delivered goods. If Avit Systems carries out repairs, a warranty is only given on the soundness of the performance of the agreed work.
- 14.10 Any failure by Avit Systems to comply with warranty obligations shall not release the Client from its own obligations under the Agreement. If the Client does not, does not properly or does not timely fulfil its obligations under the Agreement, Avit Systems shall not be obliged to comply with the relevant warranty provisions.
- 15 Confidential data, prohibition on taking over personnel, and processing of personal data**
- 15.1 Each of the parties guarantees that all data received from the other party which is known or believed to be confidential in nature shall remain secret, unless a legal obligation requires disclosure of this data. The party receiving the confidential data shall only use it for the purpose for which it was provided. In any case, information will be considered to be confidential if it is designated as such by one of the parties.
- 15.2 During the term of the Agreement, as well as for one year after termination thereof, each of the parties may employ, or make an offer to employ, employees of the other party who are or have been involved in the performance of the Agreement, or otherwise, directly or indirectly, work for them, only with the prior written consent of the other party. If this is the case, Avit Systems shall not withhold such consent, , on the condition that the Client has agreed appropriate compensation with Avit Systems.
- 15.3 If Avit Systems considers this to be important for the performance of the Agreement, the Client shall



- immediately inform Avit Systems in writing, upon request, of the manner in which the Client performs its obligations under legislation pertaining to the protection of personal data.
- 15.4 If and to the extent that personal data is processed on behalf of the Client within the scope of the performance of the Agreement, the provisions of the Act of 8 December 1992 for the Protection of Privacy in relation to the Processing of Personal Data, or those of the General Data Protection Regulation of the European Parliament and the Council of 27 April 2016 ((EU) 2016/679), may apply.
- 15.5 Avit Systems shall process personal data in a proper and careful manner and in accordance with applicable laws and regulations governing the protection of personal data.
- 15.6 Avit Systems shall make every effort to ensure that personal data is correct and complete at all times.
- 15.7 Avit Systems shall fully cooperate with the Client to (i) allow data subjects to access their personal data, (ii) delete or correct personal data, and/or (iii) demonstrate that personal data has been deleted or corrected if it is incorrect (or, if the Client does not agree that personal data is incorrect, to record the fact that the data subject considers his personal data to be incorrect).
- 15.8 Avit Systems shall not send or provide any personal data to countries outside the European Union, unless Avit Systems has received the express written consent of the Client, whether or not with additional conditions, in which case article 15.5 applies in full.
- 15.9 Avit Systems shall implement adequate technical and organisational measures to protect the personal data processed against any form of unwanted or unlawful processing. Avit Systems shall allow the Client to assess these measures.
- 15.10 In the event of a data breach at Avit Systems with respect to personal data that is processed on the instructions of the Client, Avit Systems shall immediately report this to the Client. Subsequently, Avit Systems shall provide the Client with the information requested by the Client at the Client's first request and shall provide all cooperation the Client may reasonably require from Avit Systems.
- 15.11 The Client indemnifies Avit Systems against claims by persons whose personal data has been registered or is processed within the scope of a registration of personal data held by the Client or for which the Client is otherwise responsible under the law, unless the Client proves that the facts underlying the claim should exclusively be attributed to Avit Systems.
- 15.12 The Client shall be exclusively responsible for the data processed using a service provided by Avit Systems. The Client guarantees Avit Systems that the content, use and/or processing of the data is not unlawful and does not infringe any right of a third party. The Client indemnifies Avit Systems against any legal claim by third parties, on any account whatsoever, in connection with this data or the performance of the Agreement.
- 15.13 If Avit Systems is bound by the Agreement to provide a type of information security, such security shall comply with the security specifications agreed in writing between the parties. Avit Systems never guarantees that the information security is effective under all circumstances. If a specifically described form of security is absent from the Agreement, the security shall meet a level that is customary in view of the state of the art, the sensitivity of the data, and the costs associated with taking security measures.
- 15.14 If computer, data or telecommunications facilities are used in the performance of the

Agreement or otherwise, Avit Systems shall be entitled to assign access or identification codes to the Client. The Client shall treat the access and identification codes confidentially and with care and shall only make them known to authorised personnel. Avit Systems shall never be liable for damage or costs resulting from the use or misuse of access or identification codes, unless the misuse arose as a direct result of an action or omission by Avit Systems.

## **16 Transfer of rights, joint and several liability, and penalty clause**

- 16.1 The Client shall not be entitled to sell and/or transfer the rights and/or obligations under the Agreement to a third party.
- 16.2 Avit Systems shall be entitled to transfer its claims for payment of fees to a third party.
- 16.3 If the Client consists of several natural persons and/or legal entities, each of these persons shall be jointly and severally bound to comply with the obligations set out in the Agreement concluded with or on behalf of (one or more of) them.
- 16.4 In case of violation of the provisions of article 13 (intellectual or industrial property rights) and this article 16 (transfer of rights), the Client shall be obliged to pay a fine of EUR 5,000 per violation, increased by a fine of EUR 500 for each calendar day that the violation continues.

## **17 Prepayment/security**

- 17.1 Avit Systems shall at all times be entitled to demand advance payment or security from the Client before it makes a delivery.
- 17.2 If the Client fails to provide the requested pre-payment or security, any obligation to deliver on the part Avit Systems shall lapse, without prejudicing Avit Systems' right to

compensation from the Client for any damage, costs and interest incurred by Avit Systems as a result of such failure.

## **18 Responsibilities of the Client**

- 18.1 The Client shall always provide Avit Systems in good time with all data or information useful and necessary for the proper performance of the Agreement and provide all cooperation, including providing access to its buildings and relevant equipment. Where the Client employs its own staff within the scope of providing cooperation to the performance of the Agreement, such staff shall have the necessary know-how, experience, ability, and quality.
- 18.2 The Client shall bear the risk of selecting, using and applying in its organisation the equipment, software, websites, databases and other products and materials and the services to be provided by Avit Systems, and shall also be responsible for the monitoring and security procedures and proper system management.
- 18.3 If the Client furnishes software, websites, content, materials, databases or data to Avit Systems on a data carrier, these shall meet the specifications prescribed by Avit Systems.
- 18.4 Where the Client fails to provide Avit Systems with the data, equipment, software or staff required for the performance of the Agreement or fails to provide them in good time or in compliance with the arrangements, or where the Client fails to fulfil its obligations in any other manner, Avit Systems shall have the right to suspend the performance of the Agreement in its entirety or in part and Avit Systems shall have the right to charge the resultant costs at its usual rates, all this without prejudicing Avit Systems' right to exercise any other statutory right.

- 18.5 In the event that employees of Avit Systems perform work on the site of the Client, the Client shall provide the facilities reasonably desired by those employees free of charge, such as a working space with computer, data and telecommunications facilities. The working space and facilities shall comply with all applicable statutory and other requirements and provisions concerning working conditions. The Client shall indemnify Avit Systems against claims by third parties, including employees of Avit Systems, who suffer damage in connection with the performance of the Agreement due to actions or omissions by the Client or unsafe situations in its organisation. The Client shall inform the employees deployed by Avit Systems of the house and safety regulations that apply within its organisation prior to commencement of the work.
- 18.6 If telecommunications facilities are used in the performance of the Agreement (including - but not limited to - the Internet, data connections, ISDN, SIP and/or analogue connections), the Client shall be responsible for the correct choice and the timely and adequate availability thereof, except for those facilities that are under the direct use and management of Avit Systems. Avit Systems shall never be liable for any damage or costs due to transmission errors, failures, or non-availability of these facilities, unless the Client proves that such damage or costs directly result from intent or gross negligence on the part of the management of Avit Systems.
- 18.7 The Client shall ensure an environment for the equipment supplied by Avit Systems that meets the requirements set by the manufacturer of the relevant equipment with respect to, among other things, but not limited to: temperature, humidity, power

supply, technical environmental requirements, etc.

## 19 Applicable law, Interpretation, and choice of forum

- 19.1 All our Agreements are exclusively governed by Belgian law. Applicability of the 1980 Vienna Sales Convention is excluded.
- 19.2 All disputes arising in connection with or resulting from the Conditions and/or Agreements shall be submitted to the courts in Antwerp.
- 19.3 Any clause that is contrary to mandatory provisions of Belgian law shall always, where possible, be interpreted in such a manner that the purport of the clause is maintained as much as possible, but the provision is in accordance with the law applicable at the time. In no event shall the invalidity of any provision affect the validity of any other Conditions. In this case, Avit Systems and the Client shall consult with the aim of agreeing on new provisions to replace the original provisions, while maintaining the purpose and purport of the original provision to the extent possible.

\*\*\*