

General terms & conditions

SD Worx Nederland B.V.

Deposited with the Chambre of Commerce in Breda
(The Netherlands) under Chamber of Commerce reg.
no. 62997734

General Terms and Conditions of SD Worx Nederland BV., deposited with the Chamber of Commerce in Breda under the registration number 62997734 (Dutch version). The English version to the Terms is solely for information purposes between the parties. In case of dispute or interpretation, the Dutch version of the text shall prevail and shall be considered final and only agreement between the parties.

1. DEFINITIONS

- 1.1.1 **Third-Party General Terms and Conditions:** The term 'Third-Party General Terms and Conditions' will be taken to mean, among other things, the Terms and Conditions of supply, licensing conditions, guarantee and other conditions operated by third parties.
- 1.1.2 **ASP-service:** ASP (Application Service Provision) service comprises the direct and/or indirect (through third parties) provision by SD Worx of Software through a Web application.
- 1.1.3 **Back-up:** Back-up copies of digital data and/or files.
- 1.1.4 **Confidential Information:** Any data and information on one another's organisation, clients, procedures, the files and products (including any functional specifications and other Product documentation), etc., of which the parties become aware through such things as the work they do for one another or for the Principal's clients.
- 1.1.5 **Consultancy:** Consultancy comprises the provision of verbal and/or written advice to the Principal.
- 1.1.6 **Third-Party Products:** The Software provided by SD Worx which derives from third parties and to which in principle SD Worx does not possess the intellectual rights, industrial property rights and other rights.
- 1.1.7 **Outplacement:** Employees of SD Worx may undertake work for the Principal or the latter's clients on a temporary basis.
- 1.1.8 **Services:** Any work undertaken by SD Worx. This includes Consultancy, Outplacement, Payroll Processing, Support, Personnel Administration, etc.
- 1.1.9 **Errors:** The failure by the Software to fulfil the functional specifications issued in writing by SD Worx and, in the case of developing customised Software, the functional specifications expressly agreed in writing. An Error will only be considered as such if it can be demonstrated and can be reproduced. The Principal must inform SD Worx without delay of any possible Errors.
- 1.1.10 **Identification data:** Login name, passwords, address details and/or other codes.
- 1.1.11 **Object code:** The computer programming code, mainly in binary format. The Object Code can be executed directly on a computer after processing, but without reverse engineering, compilation or assembly.
- 1.1.12 **Maintenance:** Maintenance comprises the provision of updates, including of documentation, of the Software licensed to the Principal which contain qualitative (e.g. Error repair) or functional improvements to the Software provided.
- 1.1.13 **Principal:** Any person who requests and commissions the supply (delivery) of Products and/or Services.
- 1.1.14 **Period of Acceptance:** The time period between the supply of Products and acceptance by the Principal. Unless otherwise agreed, this time period shall be four weeks.
- 1.1.15 **Personnel Administration:** Administration of personnel data.
- 1.1.16 **Process Data:** The data entered in the ASP service by the Principal, data entered by SD Worx and/or data entered by third parties.
- 1.1.17 **Products:** Any Products provided by SD Worx (SD Worx Products) and/or Third Parties (Third-Party Products).
- 1.1.18 **Payroll Processing:** The calculation of the net or gross pay of the Principal's employees and the deductions made in favour of government bodies according to the current legislation.
- 1.1.19 **SD Worx:** SD Worx Nederland B.V. and its legal successors or a company or partner associated with SD Worx Nederland BV. That enters into a legal relationship with the Principal and has declared the General Terms and Conditions of SD Worx to be applicable.
- 1.1.20 **SD Worx Products:** Any Software and Services provided by SD Worx not deriving from third parties, to which SD Worx holds any intellectual property rights, industrial property rights and other rights.
- 1.1.21 **Software:** Any computer programming code provided by SD Worx, including new releases and/or versions. Software may be either an SD WORX Product or a Third-Party Product.

1.1.22 **Source Code:** The computer programming code that can be displayed in a format that can be read and understood by a programmer of average level. This includes related Source Code System Documentation, remarks and procedural codes. The Source Code does not include the Object Code.

1.1.23 **Support:** Support comprises the provision of verbal (by telephone) and written (e-mail) advice on how to use and operate the Software.

1.1.24 **Working Days:** Normal Dutch working hours (8.30-17.30) and days (Monday to Friday inclusive), except for public holidays.

2. GENERAL

2.1 **Applicability**

2.1.1 These Terms and Conditions shall apply to all legal relationships between SD Worx and the Principal.

2.1.2 The applicability of the purchasing or General Terms and Conditions operated by the Principal are hereby expressly ignored, unless they have been expressly accepted by SD Worx in writing.

2.1.3 Modifications/additions made by SD Worx to the General Terms and Conditions shall also apply, unless objections thereto are lodged in writing within 30 days of their notification.

2.1.4 Modifications/additions to the General Terms and Conditions of SD Worx and/or the agreements concluded between SD Worx and the Principal shall only be valid if they are confirmed in writing by SD Worx.

2.1.5 If several (legal) persons or companies are indicated with the Principal, they shall be jointly and severally liable to meet the obligations under the contract concluded with SD Worx.

2.2 **Contracts**

2.2.1 The date on which the contract comes into effect, its duration and any automatic extensions thereto will be described in the contract, of which these General Terms and Conditions are an integral part.

2.2.2 A contract between SD Worx and the Principal for which no further contract and/or further duration has been agreed, shall last for one year if the provision relates to a Product and/or Service for which a sum of money will be charged periodically. If this contract is not cancelled, or not cancelled in time, it shall automatically be extended for one year.

2.2.3 SD Worx only undertakes to implement the contract concluded between SD Worx and the Principal after a signed copy of the contract drawn up by SD Worx has been received and/or if any payments due have been made in time and in full. If SD Worx commences implementation of the contract before receiving a signed copy of the contract and/or all payments due have been made in time and in full, SD Worx reserves the right to suspend implementation of the contract until a signed copy of the contract has been received and/or all payments made in time and in full.

2.2.4 If the Principal fails to return an offer or contract signed, it shall be considered that he accepts the contents of the document, as well as the General Terms and Conditions of SD Worx, by making payments to SD Worx.

2.3 **Principal's Cooperation/Obligation to Provide Information**

2.3.1 All assignments will be executed by SD Worx on the basis of the data, information, wishes and/or requirements issued by the Principal to SD Worx.

2.3.2 The Principal undertakes to provide SD Worx with all the requisite information in time and correctly. The Principal is responsible for the completeness, accuracy and timely provision of such information. SD Worx is not responsible for checking the content, completeness and accuracy of the information provided by the Principal.

2.3.3 Any erroneous, incomplete or late provision of information by the Principal that results in confirmation of a violation of the legislation shall constitute a personal fault on the part of the Principal and SD Worx shall only complete the assignment within the limits of the information provided. SD Worx accepts no liability whatsoever towards official bodies, third parties or the employees of the Principal for the accuracy of the information provided by the latter.

- 2.3.4** If, for the implementation of the contract, the requisite data, information, wishes and/or requirements are not in the possession of SD Worx in time and/or do not accord with the agreements, or if the Principal does not meet his obligations in some other way, SD Worx shall in any case have the right to suspend implementation of the contract and SD Worx shall be entitled to charge for any expenses incurred thereby in accordance with its usual tariffs.
- 2.3.5** If in the meantime changes or new facts appear in data, information, wishes and/or requirements made available previously, SD Worx shall at any time be entitled to adapt the contract to these new circumstances or dissolve or terminate it. In said case, SD Worx shall be entitled to charge the allowances specified under article 2.8.2 of the present General Terms and Conditions.
- 2.3.6** The Principal must make all the accountancy correspondences between the payroll administration and/or bookkeeping on the one hand and the (electronic) summaries supplied by the relevant bodies on the other hand that result from the Wage Tax, Social Security, Pension Fund and other deductions made in relation to the performance of the Services and to check them or have them checked. SD Worx shall never be liable if premiums and/or deductions are not correct or complete because the Principal did not meet his obligations under the Contract and/or the Conditions.
- 2.4 Confidentiality/Relationship Term/Personal Data Protection**
- 2.4.1** SD Worx and the Principal mutually undertake to maintain the secrecy of their Confidential Information. Confidential Information may only be used for the implementation of a contract.
- 2.4.2** The Parties shall not divulge Confidential Information to persons other than their own employees and/or third parties who have a legitimate reason to peruse it. Each Party shall take all reasonable precautionary measures to keep secret any Confidential Information received from the other party.
- 2.4.3** SD Worx is entitled, after receiving written permission from the Principal, to place the name and logo of the Principal or the latter's clients, to whom rights to the Products have been granted, on the SD Worx website and/or place a reference list thereon, and to make such available to third parties by way of information.
- 2.4.4** The Principal and his clients shall not enter into any direct or indirect business, employment or any similar relations with any employee of SD Worx during the lifetime of the contract and up to 12 months after its termination or dissolution without the written permission of SD Worx. The Principal must take care to ensure that his clients fulfil the aforementioned obligation.
- 2.4.5** If the stipulations of Article 2.4.4 are violated, the Principal shall be liable to pay a fine of €50,000 per violation, payable immediately, without prior notice of default, without prejudice to the right of SD Worx to demand compensation for all the damage suffered.
- 2.4.6** Data considered to be personal in nature by the Principal and provided to SD Worx for the purpose of the execution of the Agreement in hand shall be treated by SD Worx in compliance with the Personal Data Protection Act, which governs the protection of personal privacy. In doing so, SD Worx shall put in place the appropriate technical and organisational steps to prevent the non-authorized processing of the personal data in question. SD Worx and the Principal shall each assign one or several contact persons. Data call-up and/or data provision shall be allowed to occur only through these persons. The Principal hereby agrees that his data shall be included, stored and processed in a database for contractual and commercial purposes. The Principal shall be entitled to access and amend these data as well as to have them deleted in the manner as set forth under the Act. Unless the Principal were to oppose such in writing, employee data shall be permitted to be used as raw material for other operations such as study and research purposes, the results of which may be made public. In said case, SD Worx shall process the employer data in a manner that makes them unidentifiable. The Principal shall procure the consent from his employees for the processing of their details with a view to payroll accounting and staff management and for study and research purposes.
- 2.5 Liability**
- 2.5.1** SD Worx provides its services exclusively to its best knowledge and ability. SD Worx is only liable if the Principal can demonstrate that SD Worx did not meet its obligations as the result of its own negligence. In that case, the Principal may sue SD Worx for any proven damage the former suffered, while recognising the limitations in the present Terms and Conditions and in compliance with the provisions of Article 6:98 Civil Law.
- 2.5.2** The total liability of SD Worx for its own negligence in fulfilling the contract shall be limited to compensation for direct damage and then for no more than the price stipulated for that contract (excluding VAT), with a maximum of Euro 250,000; in this regard, a series of related events shall be considered as one event, unless it is a matter of deliberate intent or recklessness.
- 2.5.3** If the contract consists of an ongoing contract, with a duration of more than one year and the liability of SD Worx arises from that ongoing contract, the price stipulated shall be set at the total of the payments (exc. VAT) actually paid by the Principal to SD Worx based on the ongoing contract for one year (being the year in which the damage occurred), with a maximum of Euro 250,000.
- 2.5.4** The following alone will be taken to mean 'direct damage':
- The reasonable costs incurred in confirming the cause and the proven extent of the damage;
 - The reasonable costs incurred in preventing or limiting damage, insofar as the Principal can demonstrate that these costs have resulted in limiting the damage.
- 2.5.5** The liability of SD Worx is expressly excluded for indirect damage, including consequential damage, loss of profits, lost savings, files and/or data destroyed or mislaid, damage due to delays, any loss suffered, damage caused by insufficient provision of information and/or lack of cooperation by the Principal, damage due to a stagnation in business or claims by third parties against the Principal, or damage due to a workers' strike.
- 2.5.6** The liability of SD Worx arises only if the Principal gives notice of default in writing to SD Worx, immediately and with well-founded reasons, giving a reasonable period of time to rectify the shortcoming and SD Worx continues to fail to honour its obligations even after that period of time. The notice of default must include a description of the shortcoming in as much detail as possible, so that SD Worx will be able to react appropriately.
- 2.5.7** The condition for any right to compensation is always that the Principal notifies SD Worx of the damage within 60 days of its occurrence in writing by registered letter and thereby takes such measures as are necessary to limit the damage as much as possible.
- 2.5.8** SD Worx accepts no liability whatsoever for damage of any kind arising from Third-Party Products which SD Worx has supplied to the Principal. If possible, SD Worx will transfer its rights to claim compensation from the supplier of the Third-Party Product to the Principal.
- 2.5.9** The Principal shall hold SD Worx harmless from any claims from third parties, which relate to the performance of the Services and/or the Contract directly or indirectly, eventually or immediately, including claims from the Inland Revenue Service or other authorised bodies.
- 2.6 Non-Imputable Shortcoming**
- 2.6.1** Neither party is held liable to fulfil any obligation if they are prevented from doing so because of a circumstance for which that party cannot be blamed. Such circumstances also include those which are beyond the control of SD Worx and operating risks of SD Worx, such as – though not limited to – shortcomings by suppliers of SD Worx, the delayed provision of necessary data, information and/or specifications, changes to such provided information, inclement weather, fire, explosion, power cuts, network crashes, flood, illness, lack of staff, strikes, lightning strikes or other labour conflicts, accidents, the actions of the authorities, the impossibility of obtaining a required licence or permit, scarcity of material, theft, traffic problems and/or transport hindrances.
- 2.6.2** If the non-imputable shortcoming is temporary, SD Worx may suspend the contract until the situation concerned ceases, without being liable to pay any compensation.
- 2.6.3** If a non-imputable shortcoming arises, SD Worx reserves the right to claim payment for services it had already provided before the non-imputable shortcoming became known.

- 2.6.4** If the non-imputable shortcoming of one of the parties continues for more than three months, both parties have the right separately to dissolve the contract, without being liable to pay any compensation for that dissolution.
- 2.7** **Transfer**
- 2.7.1** The contract concluded between SD Worx and the Principal and the rights and obligations arising therefrom may not be transferred to third parties without the prior written permission of SD Worx.
- 2.7.2** The Principal gives SD Worx the right to transfer the entire contract or parts thereof to parent, sister and/or subsidiary companies, to a third party in the case of a merger or takeover of SD Worx.
- 2.8** **End of Contract**
- 2.8.1** Cancellation of the Contract as described in Articles 2.2.1 and 2.2.2 will be done by means of a registered letter to be received by SD Worx at least three calendar months before the end of the calendar year, unless agreed otherwise.
- 2.8.2** If the Principal does not cancel the Contract as described in Articles 2.2.1 and 2.2.2 in the manner prescribed in Article 2.8.1, or if the Principal purchases few or no services and/or offers so few processing data to SD Worx in such a way that SD Worx may reasonably assume that the Principal no longer wishes to fulfil the Contract, SD Worx shall have the right to charge an amount payable immediately by way of compensation. This amount shall be equal to 25% of the amounts invoiced in the 12 months preceding confirmation of termination, multiplied by the number of years remaining in the lifetime of the contract, with a minimum of Euro 500, without prejudice to the right of SD Worx to claim damages for such things as, but not limited to, the implementation costs. If the purchase of services and the provision of processing data does not yet cover 12 months, the amounts invoiced on an annual basis will be confirmed by way of extrapolation.
- 2.8.3** If the Contract is terminated towards the end of the calendar year in accordance with the provisions of Article 2.8.1, SD Worx will continue to carry out Services during the first 3 (three) calendar months maximum of the succeeding calendar year concerning the closure of the administrative data processing for the previous calendar year, to be charged for at the rates applicable when the Contract was terminated and in accordance with the Terms and Conditions of this Contract.
- 2.8.4** If the Principal has cancelled the Contract in accordance with Article 2.8.1, but nevertheless continues to send Data to SD Worx after the last calendar month of the calendar year other than for the administrative closure as described in Article 2.8.3, the cancellation will be considered to have been withdrawn. The Contract will continue at the current tariffs and conditions.
- 2.8.5** Either of the Parties is entitled to terminate the Contract wholly or in part by means of a registered letter without judicial intervention, if the defaulting Party continues to default on his obligations even after written notification stating a reasonable deadline.
- 2.8.6** Moreover, SD Worx has the right, with immediate effect and without judicial intervention, by means of an extra-judicial declaration to terminate or cancel the Contract and/or the offers if the Principal enters an application for legal debt restructuring, if the Principal files for bankruptcy or a payment moratorium or the Principal is declared bankrupt or is granted a payment moratorium or if the Principal's company is liquidated or terminated, other than for the purpose of reconstruction or merging of companies. In these cases, any claim by SD Worx against the Principal is direct and payable in full.
- 2.8.7** After the end of the Contract, for whatever reason, the Principal may derive no further rights from the Contract, though the obligations of the Parties shall continue, which are destined according to their nature to remain after the end of the Contract, such as –but not limited to – the obligations regarding property rights, confidentiality and the relationship term.
- 2.9** **Invalidity**
- 2.9.1** If one or more provisions of the Contract are invalid, declared null and void, are defeasible or have lost their legitimacy in some other way, the remaining provisions of the Contract shall remain in force.
- 2.9.2** The Parties will consult one another with regard to provisions that are invalid, declared null and void, are defeasible or have lost their legitimacy in some other way in order to find a substitute, in such a way that the Parties aim to ensure that the purport of the Contract as a whole shall remain intact.
- 2.10** **Applicable Law and Settlement of Disputes**
- 2.10.1** Dutch law applies to all contracts concluded between SD Worx with the Principal. The Parties expressly declare that the Vienna Treaty on Commerce does not apply.
- 2.10.2** Any dispute between the Parties on the Contract they have concluded shall exclusively be decided on by the authorised court in Breda, The Netherlands.
- 2.11** **(Delivery) deadlines**
- 2.11.1** Any (delivery) deadlines stated by and applicable to SD Worx are to the best of its knowledge set on the basis of the data made known to SD Worx and shall be taken into consideration as far as possible.
- 2.11.2** (Delivery) deadlines will therefore not be considered as fatal deadlines by which a delivery must be made, but as deadlines by which SD Worx will make every effort to deliver what was agreed. If there is any possibility that a deadline will not be met, SD Worx and the Principal shall consult one another as soon as possible to set a new deadline.
- 2.11.3** Unless agreed otherwise, the failure by SD Worx to meet any (delivery) deadline shall never be considered as an imputable shortcoming on the part of SD Worx. Under no circumstances shall SD Worx accept liability if a (delivery) deadline is not met.
- 3. PRICES/PAYMENTS**
- 3.1** **Prices and Payments**
- 3.1.1** All prices stated exclude VAT but not other levies, if any, imposed by the authorities.
- 3.1.2** SD Worx will charge the Principal periodically for the amounts owed thereby. The Principal shall pay the amounts outstanding within 30 days of invoice date, without being allowed to make any deduction, counterclaim or debt set-off other than as permitted by law.
- 3.1.3** If there is a dispute over an invoice, the Principal shall inform SD Worx thereof in writing within 10 days of receiving the invoice. The Principal shall in any case pay the undisputed part of the invoice.
- 3.1.4** If the Principal fails to fulfil his obligation to pay, he shall automatically be in default without any further writ or notification thereof being required. The Principal shall automatically be liable to pay interest for the delay in payment ipso jure and without further notification, such interest being at the official rate for commercial transactions. The Principal shall be liable to pay SD Worx for the costs arising from recovering the amount due to SD Worx. Extra-judicial recovery costs amount to 10% of the amount due, with a minimum of Euro 250.
- 3.1.5** SD Worx has the right to suspend its work and other obligations until payment has been made in full, although the Principal must continue to fulfil his obligations.
- 3.1.6** If SD Worx is unable to deliver because of an oversight on the part of the Principal, SD Worx shall be entitled to charge 1.5% interest per month on the amount due, by way of compensation.
- 3.1.7** The payment for Maintenance, Support and any other annual or periodic payments are due in advance from the moment that the contract between the Parties comes into effect and shall be charged in advance for each new year or any other period that the contract between the Parties remains in force.
- 3.1.8** The foregoing stipulations are without prejudice to the other rights accruing to SD Worx for any failure by the Principal in meeting his obligations.
- 3.2** **Price Modifications**
- 3.2.1** The prices agreed between SD Worx and the Principal are among other things based on the costs of salaries, social charges, materials, travel and accommodation costs, etc., as well as the exchange rate of the currency used, as applicable when the Contract was concluded. SD Worx is entitled to adjust the prices in accordance with any changes in one or more cost items and or the exchange rate.

3.2.2 SD Worx shall inform the Principal of any price modifications. If the Principal does not agree with a price modification, he shall only be entitled to terminate the Contract with effect from the date on which the price modification comes into force, if the total price rise during one year exceeds the CBS index for commercial service provision in the current year (or the previous year for price rises announced for the following year) by more than 5%.

3.3 Fixed Price

3.3.1 With a fixed-price agreement, the work will be carried out for an amount agreed beforehand. Unless agreed otherwise, overtime will not be charged for.

3.3.2 Unless agreed otherwise, the following payment instalments apply to a fixed-price agreement:

- a) First instalment: 30% of the amount due must be paid in advance;
- b) Second instalment: 40% of the amount due must be paid monthly in equal parts from the date when the Contract comes into effect and the expected delivery date of the contracted Product;
- c) Third instalment: 30% of the remainder of the amount due must be paid immediately after delivery.

3.4 Subsequent Calculation

3.4.1 If settlement is made on the basis of subsequent calculation, this means that a global estimate of the expected costs can be made beforehand. All the costs actually incurred shall be charged for when the work to be carried out has been completed. The Principal is therefore aware that the estimate made previously may be lower than the costs actually incurred. If no method of settlement has been agreed beforehand, the work shall be carried out on the basis of subsequent calculation.

3.5 Advances

3.5.1 SD Worx is entitled to charge an advance. If the advance is not paid in full, SD Worx shall be entitled, without prejudice to its other rights, to suspend the further fulfilment of the Contract immediately and everything owed by the Principal to SD Worx for whatever reason shall become payable immediately.

4. INTELLECTUAL PROPERTY RIGHTS

4.1 Rights of SD Worx and Principal

4.1.1 SD Worx has the exclusive right to develop SD Worx Products further, and to license them for use by third parties.

4.1.2 Except for Third-Party Products, all the intellectual property rights, industrial property rights and other rights deriving therefrom shall remain with SD Worx for every assignment undertaken by SD Worx.

4.1.3 The Principal acknowledges that all the current and future intellectual property rights, industrial property rights, other rights and the registration of and/or application for the aforementioned rights and/or similar rights shall accrue to SD Worx for all time throughout the world or shall be transferred thereto.

4.1.4 If SD Worx, the Principal or third parties make functional improvements or other modifications to the Products, the intellectual property rights, industrial property rights and other rights to the improved or modified Products remain in this case unchanged with SD Worx or the third-party proprietor.

4.2 Third-Party Action

4.2.1 SD Worx shall hold the Principal harmless from any action against it based on the allegation that SD Worx Products have violated copyright valid in The Netherlands. SD Worx shall pay the costs and damages due under the final judgement, provided that the Principal:

- a) informs SD Worx of the claim immediately, but no later than 10 days after the alleged violation of copyright was brought to the attention of the Principal or after the Principal could reasonably be expected to have known about it and
- b) leaves the entire handling of the case to SD Worx, including negotiations on an out-of-court settlement.

If such an action is launched or the possibility thereof exists, SD Worx reserves the right to acquire the licence- or sub-licence rights to the SD Worx Product or to modify the SD Worx Product in such a way that it no longer violates the copyright valid in The Netherlands. If, in the opinion of SD Worx, the foregoing possibilities cannot reasonably be considered, SD Worx may retract the SD Worx Product that has been delivered for payment of the amount already paid

for this SD Worx Product, less a reasonable sum for the use made of the SD Worx Product.

4.2.2 SD Worx will not hold the Principal harmless from a third-party action if:

- a) it is based on the allegation that the Third-Party Products delivered to the Principal violate an intellectual property right, industrial property right or other right valid in The Netherlands or elsewhere;
- b) what was supplied/delivered by the Principal is part of or supplied/delivered in connection with a Product and that combination violates an intellectual property right, industrial property right or other right valid in The Netherlands or elsewhere;
- c) the Principal has made a modification to the Product.

5. SOFTWARE

5.1 User-rights

5.1.1 SD Worx grants the Principal the non-exclusive right to use the Software, with the documentation pertinent thereto.

5.1.2 The user-right is limited to deploying the Software exclusively for the Principal's own use among the number of users and/or employees agreed with SD Worx.

5.1.3 The user-right to the Software is limited to the Object Code. Rights to the Source Codes themselves will not be granted, unless expressly agreed otherwise.

5.1.4 The Principal may not copy, duplicate or modify the Software in any way himself and/or via third parties without the prior written permission of SD Worx.

5.1.5 The user-right to the Software may not be transferred to third parties (including parent or sister companies and/or subsidiaries of the Principal). The Principal is not authorised for any reason whatsoever or in any way whatsoever to make the Software available to third parties (including parent or sister companies and/or subsidiaries of the Principal).

5.1.6 The user right takes effect after payment has been made by the Principal and the other obligations incumbent thereupon have been fulfilled.

5.1.7 Rights will be granted to the Principal subject to the suspensory condition that the Principal pays the agreed amounts in time and in full. If the Principal neglects to make due payment, he must return the Software to SD Worx within a week, after being ordered to do so by SD Worx. All other legal recourses remain applicable.

5.1.8 The Software is at the risk of the Principal from the moment of its delivery. Hence, the Principal remains liable to pay the (purchase) price, regardless of whether the Product perishes or deteriorates due to a cause that cannot be imputed to SD Worx.

5.1.9 SD Worx is entitled to process technical limitations and a control mechanism into the Software in order to prevent and/or check that the actual number of users does not exceed the number agreed.

5.1.10 If from checks or otherwise it appears that the actual number of users and/or employees exceeds the number of users agreed, the Principal must immediately pay for the number of missing user-licences, plus a fine of 25% over the additional amount to be paid. The Principal shall be charged for the amounts due for Maintenance and Support for the missing user-licences with retroactive effect, up to the time of the latest/last delivery of the previously agreed number of users. In addition, SD Worx reserves the right to report the matter to the Business Software Alliance (BSA).

5.2 Maintenance and Support

5.2.1 During the lifetime of the Maintenance and Support Contract, SD Worx will make every effort to repair Errors in the Software, provided the Principal informs SD Worx about such Errors by means of a written, detailed report. SD Worx is entitled to repair, modify or replace the Software at its own expense, as it sees fit.

5.2.2 SD Worx is entitled to charge the usual prices and costs for repairing, modifying or replacing the Software if Errors can be considered as errors in the general sense on the part of the Principal as a consequence of careless or inept use, or other causes, which cannot be imputed to SD Worx or if the Principal could reasonably have been expected to discover the Error(s) during the Period of Acceptance.

5.2.3 Maintenance does not include the reconstruction and/or repair of damaged or mislaid files and/or data.

5.2.4 If Maintenance requires a functional improvement, SD Worx is entitled to charge extra costs by way of compensation for that functional improvement.

- 5.2.5** SD Worx is entitled to refuse the provision of Maintenance if the Software, or the environment in which the Software operates, is altered by the Principal and/or Maintenance and/or Support is required as the result of erroneous use of the Software or as the result of causes beyond the Software itself.
- 5.2.6** If the Principal refuses to install new updates offered by SD Worx to the Principal, SD Worx reserves the right to terminate the Contract, or to adapt the Contract to that refusal.
- 5.2.7** SD Worx will only provide support if the latest service packs/updates of Software and the operating system are installed.
- 5.2.8** SD WORX shall be entitled to change the terms and conditions for the environment in which the Software operates upon the delivery of a new release.
- 5.3** **Back-ups**
- 5.3.1** The Principal may, for the purposes of security, make a Back-up of the Software provided, if a Back-up has not been provided by SD Worx.
- 5.3.2** As far as possible, the Principal himself is responsible for making Back-ups in good time. SD Worx will inform the Principal about any procedures that might be needed to secure the data and make Back-ups, at the Principal's request.
- 5.3.3** If it is not possible for the Principal to make Back-ups (and it is possible for SD Worx to make them) or if it has been agreed that SD Worx will provide for making Back-ups partly or entirely, then SD Worx will make the Back-ups. Under no circumstances will SD Worx be liable for those Back-ups with regard to, though not limited to, the partial or total loss of Back-ups and/or errors in the Backups.
- 5.4** **ASP-service general**
- 5.4.1** The ASP service will be provided only at a location approved by SD Worx and on hardware approved by SD Worx. The Principal must follow the instructions of SD Worx regarding the ASP service.
- 5.4.2** With regard to the access to and use of the ASP service, the Principal has hardware and software that meets the standards and/or requirements set and announced by SD Worx. If and for so long as the hardware and/or software does not meet those standards/requirements, the obligation incumbent upon SD Worx to provide access to the ASP service and the use thereof by SD Worx will be suspended.
- 5.4.3** If the Principal does not abide by the standards and/or requirements mentioned in this article, SD Worx shall have the right to terminate the Contract, wholly or in part, or to dissolve it without prior notice of default in writing and/or judicial intervention.
- 5.4.4** SD Worx is entitled to examine log files and similar for the purpose of analysing the use of the ASP service.
- 5.4.5** If the Principal discovers a problem in the ASP service, he must report it immediately to SD Worx, after which SD Worx shall take the necessary measures to ensure its rectification, if possible.
- 5.4.6** The costs of solving the problem shall be charged to the Principal if it appears that the cause of the problem is the result of his inept use or his actions or negligence in conflict with the Contract.
- 5.4.7** SD Worx shall inform the Principal in advance of planned Maintenance regarding the ASP service, if such Maintenance is likely to cause problems regarding obtaining access to the ASP service or the non-availability of the ASP service (from 00:00 to 06:00 hrs (CET)).
- 5.5** **Obligations of SD Worx regarding ASP service**
- 5.5.1** SD Worx will do its utmost to ensure the availability of the ASP service.
- 5.5.2** SD Worx does not, among other things, guarantee that the telephone lines, the Internet and/or other networks will offer optimum use and access if SD Worx is dependent on third-party telecommunication providers for the use and/or provision of those connections.
- 5.5.3** SD Worx has no obligations regarding the availability, reliability or other performance requirements concerning telephone lines, the Internet and/or other networks and the provisions deriving therefrom.
- 5.5.4** SD Worx shall take all such useful and necessary measures as are necessary to ensure the proper functioning and continuity of the ASP service.
- 5.5.5** SD Worx will make every effort, as far as the current technology allows, to provide sufficient physical and logical security against illicit access by third parties to the computer hardware, programs and/or stored Process Data used by SD Worx in relation to the provision(s) agreed in the Contract.
- 5.6** **Browser**
- 5.6.1** The ASP services can be accessed by the Principal using a browser. The ASP service is optimised for the browsers indicated by SD Worx. Those browsers for which the ASP service has been optimised when the Contract comes into force will be announced by SD Worx later.
- 5.6.2** SD Worx is not obliged to maintain access to the ASP service by means of the browsers mentioned in this article. SD Worx is entitled, without any form of liability to pay compensation (damages), to make modifications to the ASP service that might affect the browsers used by the Principal and/or recommended by SD Worx.
- 5.6.3** If a case arises as described in this article, SD Worx will make every reasonable effort to enable the Principal to change over to another browser. The costs incurred thereby will be the responsibility of the Principal.
- 5.7** **Use of Identification Data**
- 5.7.1** SD Worx will only provide the Principal with Identification Data for using the Software. The Principal will handle such Identification Data with care and attention. Upon the loss, theft and/or other forms of illicit use of the ID Data, the Principal shall inform SD Worx thereof, so that the Parties can take the appropriate measures.
- 5.7.2** The Principal bears full responsibility, liability and costs incurred by the use of the Identification Data, used and/or divulged by the Principal. Under no circumstances shall SD Worx be liable for the misuse and/or illicit use of the ID Data.
- 5.7.3** If there is reasonable suspicion that misuse or illicit use is being made of the Principal's ID Data, SD Worx may issue instructions to the Principal, which must be followed. If it is confirmed that the ID Data are being misused or that the Principal has not responded to the instructions, the Principal shall be directly in default.
- 5.8** **Modifications to the ASP service**
- 5.8.1** SD Worx is entitled to make additions and/or modifications to the ASP service, after written notification giving a reasonable period of time and without any compensation being due to the Principal, with regard to, but not limited to:
- Access procedures, such as procedures relating to the operating rules and security requirements;
 - Changing a third-party provider/supplier, location, hardware, software and other facilities important for the provision of the ASP service.
- 5.8.2** If the modifications give rise to a demonstrably negative change that is so great as to affect the operation of the Principal's company and/or the functionality of the ASP service, the Principal may, after having first demonstrated the deterioration in writing, send SD Worx a written request asking the latter to provide an alternative. If SD Worx offers no reasonable alternative, the Principal shall have the right to terminate the use of the ASP service, with no obligation on the part of SD Worx to pay compensation in the matter or to reimburse any money already paid.
- 5.9** **Principal's Data Traffic**
- 5.9.1** Process Data will in principle be kept for the legally obligatory period throughout the lifetime of the Contract. SD Worx is not obliged to keep Process Data after that period.
- 5.9.2** SD Worx will cooperate in the conversion of Process Data and/or other data to another application if so requested by the Principal. SD Worx never guarantees that the Process Data present and/or other data can be converted to another application during the lifetime of the Contract or after termination thereof. The Principal is entirely responsible for the completeness and accuracy of Process Data and/or other data from the moment the Process Data and/or other data are entered in another application.
- 5.9.3** All costs relating to converting Process Data and/or other data at the request of the Principal to another application shall be borne entirely by the Principal.
- 5.9.4** Process Data may contain personal information. SD Worx is responsible for protecting personal information which SD Worx must use for implementing the Contract correctly and it shall hold the Principal harmless from any liability if a lawsuit is launched against the Principal by a person on the grounds of a violation of his/her privacy as the result of the actions or negligence of SD Worx.

- 5.10 Obligations of the Principal regarding the ASP service**
- 5.10.1** If personal information and/or other information/data are transported by means of the ASP service, the Principal shall hold SD Worx harmless from any liability, costs or damage resulting from claims by third parties if such personal information and/or other information/data is exported in contravention of the relevant (privacy) legislation and/or other legislation on the matter.
- 5.10.2** The Principal shall inform SD Worx in writing without delay about any modifications that are relevant for the proper operation of the ASP service.
- 5.10.3** The Principal shall abide by the instructions of SD Worx regarding Fair Use. If the Principal does not abide by the instructions issued by SD Worx, the latter is authorised to reduce the load caused by the Principal, or to terminate provision of the ASP service to the Principal if overloading persists. SD Worx shall never be liable for damage of any kind suffered by the Principal or third parties as the result of the measures taken by SD Worx.
- 5.11 Code of Conduct**
- 5.11.1** SD Worx reserves the right to terminate the use of the ASP service and/or the other facilities provided, to remove the information concerned and/or suspend its obligations if, in its opinion – and if required to do so under the law or a court judgement and/or if a third party informs SD Worx thereof and/or there is a suspicion that through the ASP service the rights of a third party are being violated – there has been a contravention of the General Terms and Conditions of SD Worx and/or the Contract.
- 5.11.2** SD Worx and/or third parties shall never be liable for any damage of any kind suffered by the Principal and/or third parties as a result of the measures taken on the basis of this article by and/or on behalf of SD Worx. The obligations to pay the agreed sums remain applicable in full during the measures taken under this article by and/or on behalf of SD Worx.
- 5.11.3** If the seriousness of the Principal's actions and/or failure to act so justify, and/or if they continue in spite of the measures by and/or on behalf of SD Worx as set out in this article, SD Worx shall have the right to dissolve the Contract, without any liability on the part of SD Worx to pay compensation in the matter or to reimburse sums of money already paid.
- 5.12 Delivery, Installation and Acceptance Procedures**
- 5.12.1** SD Worx shall deliver and install the Software to the Principal in accordance with the specifications confirmed in writing by SD Worx.
- 5.12.2** Before installation and/or implementation can begin, the Principal shall ensure at his own expense that all the Terms and Conditions stated by or through SD Worx have been met, for the purpose of ensuring a successful installation and/or implementation.
- 5.12.3** If the installation and/or implementation cannot be completed by the agreed deadline through the actions of the Principal, the latter shall make payments as though the installation and/or implementation had taken place, without prejudice to the obligations of SD Worx to install and/or implement by a new deadline to be set.
- 5.12.4** A Period of Acceptance will commence immediately after completion of the installation.
- 5.13 Errors**
- 5.13.1** Any entitlement to the repair of Errors lapses if the Software provided is altered by the Principal in any form or manner whatsoever.
- 5.13.2** Errors will be repaired at a location indicated by SD Worx. SD Worx is entitled to implement temporary solutions, emergency solutions, detours and/or other problem-limiting measures.
- 5.13.3** Acceptance of the Software may not be withheld on grounds other than those relating to the specifications expressly agreed by the Parties and which do not reasonably impede the operational or productive deployment of the Software because of the existence of minor Errors.
- 6. SERVICES**
- 6.1 Recommendations**
- 6.1.1** Any Services that can be considered as recommendations or which have an advisory nature, such as – but not limited to – Payroll processing, Support, Consultancy, Outplacement, Personnel Administration can only be provided to the best of SD Worx' knowledge and ability.
- 6.1.2** SD Worx is not responsible and/or liable if the consequence of the work resulting from the recommendation is that a project by the Principal cannot be completed within the budget set, the deadline or any other conditions set beforehand.
- 6.1.3** SD Worx will make recommendations on the basis of the preconditions indicated by SD Worx and the information received from the Principal. If it appears that not all the relevant information had been obtained and/or if other kinds of problems and/or insights come to light, the recommendation given may be adapted to this new situation.
- 6.2 The Work**
- 6.2.1** All Services shall as a rule be performed uninterrupted on Working Days and under normal working conditions.
- 6.2.2** SD Worx is entitled to charge a minimum of four hours for each uninterrupted period in which SD Worx undertakes work at a location other than at its own premises for four hours or less.
- 6.2.3** Work done outside Working Days will be considered as overtime. Overtime will be charged at the applicable normal rate plus 50%. Overtime worked at weekends and on public holidays will be charged at the applicable normal rate plus 100%.
- 6.2.4** SD Worx is not obliged to follow instructions that change or supplement the content or scope of the agreed work, although if such instructions are followed, the work concerned will be charged for on the basis of Subsequent Calculation.
- 6.2.5** SD Worx is entitled to engage third parties when undertaking work, without the express permission of the Principal.
- 6.2.6** If the Contract is entered into with a view to having the work done by a particular person, SD Worx shall always be entitled to replace that person with one or more persons with the same qualifications.
- 6.3 Delivery and Acceptance Procedure**
- 6.3.1** The delivery by or through SD Worx of Services will be made at the place(s) and time(s) where the Services will be performed.
- 6.3.2** If the Services cannot be performed within the agreed time because of the action of the Principal, the latter shall be liable to pay as though the Services had been performed, without prejudice to the obligations of SD Worx to perform the Services at a new time to be confirmed.
- 6.3.3** A Period of Acceptance period will commence immediately after completion of the Services.
- 6.3.4** After the Principal has accepted the Services, SD Worx shall not be held liable for any damage arising from the Services if that damage is the consequence of a problem that the Principal would have been able to discover during the acceptance period.
- 6.4 Electronic wage and salary tax returns**
- 6.4.1** If applicable, the Principal shall give SD Worx a power of attorney in order to handle the electronic filing of wage and salary tax returns with the Inland Revenue Service.
- 6.4.2** Filing electronic wage and salary tax returns shall include the electronic signing of the returns.
- 6.4.3** SD Worx shall be bound to file the electronic wage and salary tax returns only on the basis of the data provided to SD Worx by the Principal. The Principal shall be duly responsible for the accuracy and completeness of the data supplied to SD Worx. SD Worx shall transact the filing of the electronic wage and salary tax returns on the basis of specifications and results generated by the SD Worx' salary system setting out from the data supplied by the Principal.
- 6.4.4** Vis-à-vis the Inland Revenue Service, the Principal shall be fully accountable and liable for his payroll administration and the electronic filing of the wage and salary tax returns performed by SD Worx on his behalf, regardless of the fact that the payroll administration and filing thereof are handled by SD Worx on his behalf. The Principal shall hold SD Worx harmless for all and any liability arising as a result of or in connection with the electronic filing of wage and salary tax returns due to the fact that the Principal provided SD Worx with inaccurate or incomplete data or did so behind time.
- 6.4.5** The Principal undertakes to provide SD Worx with the legally required data for the digital filing of wage and salary tax returns in timely fashion, so as to enable SD Worx to handle the processing of the wage and salary data and the filing of the related returns for the relevant salary period in correct and timely fashion.

- 6.4.6** Costs, including internal costs, incurred by SD Worx in connection with or related to the non-timely delivery of the data, or amendments or supplements respectively that are required to be made due to the fact that the Principal provided SD Worx with inaccurate or incomplete data, shall be at the charge of the Principal and shall be billed by SD Worx at the applicable rates.
- 7. THIRD-PARTY PRODUCTS**
- 7.1 Third-Party Products**
- 7.1.1** SD Worx is entitled to issue Third-Party Products or deploy Third-Party Products in fulfilling the obligations incumbent upon it under the Contract. SD Worx is not responsible for Third-party Products unless agreed otherwise in writing.
- 7.1.2** If SD Worx supplies the Principal with Third-Party Products, the General Terms and Conditions pertaining to Third Parties shall apply to the Contract in addition to the present General Terms and Conditions of SD Worx.
- 7.1.3** SD Worx supplies rights to Third-Party Products under the Terms and Conditions as described in the General Terms and Conditions pertaining to Third Parties.
- 7.1.4** With regard to the Third-Party Products delivered, SD Worx shall:
- a) Carry out Maintenance as described in the General Terms and Conditions pertaining to Third Parties;
 - b) Act as the point of contact for all problems, questions, etc. relating to the Third-Party Products.

SD Worx Nederland B.V.
Postbus 3900
4800 DX Breda
Telephone: +31 (0)76 - 5231000