

## **General Terms and Conditions of Sale and Delivery Avit Systems België B.V.**

### **1 Definitions**

- 1.1 **Avit:** Avit Systems België B.V.
- 1.2 **Client:** the party with whom Avit concludes an Agreement
- 1.3 **Agreement:** the agreement between Client and Avit
- 1.4 **Terms and Conditions:** these general terms and conditions of sale and delivery (as may be in effect from time to time and published on the website of the Avit Group: [www.avitgroup.com](http://www.avitgroup.com)).

### **2 Applicability**

- 2.1 The Terms and Conditions apply to all deliveries of goods and/or services by Avit, as well as to all quotations made by Avit.
- 2.2 Deviations from and/or amendments to these Terms and Conditions shall only be valid if agreed in writing by both parties.
- 2.3 The applicability of (general purchase or other) conditions of Client is explicitly rejected.

### **3 Quotations**

- 3.1 All quotations are without obligation unless they contain a deadline for acceptance. If a quotation contains an offer with a deadline and this offer is accepted by Client, Avit has the right to still withdraw the offer within five working days of receiving the acceptance.
- 3.2 All preliminary calculations and estimates issued by Avit are only indicative, unless indicated otherwise in writing. Client may not, under any circumstances, derive any rights from such a preliminary calculation or estimate. A budget made available by Client to Avit shall never count as a (fixed) price agreed between the parties for the work to be provided by Avit. Only if the parties have agreed this in writing is Avit bound to inform Client in the event of a potential overrun of a preliminary calculation or estimate issued by Avit.
- 3.3 If the quotation contains an obvious mistake or clerical error, Avit cannot be held to it.
- 3.4 No rights may be derived from (oral) statements relating to technical properties and delivery times. Measures and data contained in drawings, illustrations, catalogues, websites, quotations, advertising material, and the like are not binding for Avit.
- 3.5 Client guarantees the accuracy and completeness of any measurements, requirements, specifications of the performance and other documents and/or data, communicated to Avit by or on behalf of the Client, on which Avit has based its quotation and/or the Agreement (in part or in full).

### **4 Agreement**

- 4.1 An agreement is only established following acceptance by Client of a quotation and/or proposed service agreement issued by Avit.
- 4.2 These Terms and Conditions, together with the specific provisions of and the (other) attachments to the quotation or service agreement, constitute the Agreement. In the event of conflict between provisions, the following order of priority applies: i) the quotation or service agreement, ii) the (other) attachments to the quotation or service agreement, iii) these Terms and Conditions.
- 4.3 Further arrangements, also if they concern (for example) verbal or written promises by Avit employees, only bind Avit after and to the extent that they have been confirmed in writing by the Avit management to Client.
- 4.4 With regard to the work carried out by Avit and the amounts owed by Client, the relevant documents and data from Avit's administration or systems constitute full evidence, without prejudice to Client's right to provide proof to the contrary.

### **5 Amendment of the Agreement**

- 5.1 If Client, in addition to the supply of services and/or goods as laid down in the Agreement, requests Avit employees performing the stipulated work (on site) to carry out additional work, Avit has the right to charge Client for this additional work. Unless agreed otherwise in writing, the provisions of the Agreement, including

these Terms and Conditions, apply to such additional work.

- 5.2 Avit or the employee concerned is never obliged to comply with such a request for additional work or deliveries and may require that a separate agreement (first) be concluded for this. Avit or the employee concerned is furthermore only bound to perform the additional work to the extent that this can be reasonably expected and to the extent that this, in the opinion of Avit or the employee concerned, fits in with the other work. If another Avit employee has to be deployed to carry out the additional work, or the employee concerned must return at a different time, he shall inform Client of this. The additional work in question will be confirmed in writing by (the relevant employee or another employee of) Avit to Client as soon as possible after receipt of the request to carry out the additional services or deliveries. If no separate agreement as referred to above is drawn up, the confirmation shall count as an addition to the existing Agreement.
- 5.3 Client accepts that any additional requests may have an impact on the arrangements initially laid down in the Agreement (such as inter alia the time of delivery and/or completion of the services). Such additional work (or additional requests for such work) as well as the impact thereof on the earlier arrangements shall in no event constitute grounds for Client to dissolve or cancel the Agreement.
- 5.4 If a fixed price is agreed for the work, Avit shall, on request, inform Client in writing of the financial consequences of the additional work as referred to in Article 5.1 - 5.3.
- 5.5 Avit is entitled to change a service or to replace certain parts of the service with other parts, unless the essential character of the service would be adversely affected by this. Avit shall inform Client of any financial consequences and the impact on any agreed delivery times.

## **6 Delivery**

- 6.1 Delivery of goods takes place by delivery by hand of the goods, or the most important parts thereof. Unless agreed otherwise in writing in advance, Avit may dispatch goods in parts, each consignment being payable separately.
- 6.2 The risk of loss or theft of or damage to goods, products, software or data subject to the Agreement shall pass to Client at the moment when such goods are placed at the actual disposal of Client or any representative of Client. This de facto power of disposal is also assumed to exist as soon as the items are temporarily stored at Avit at Client's request or remain there in anticipation or in preparation of the agreed installation work.
- 6.3 If the goods are stored (temporarily or initially) at Avit at Client's request, the transport costs shall be charged to Client and, if the goods remain stored at Avit for more than two weeks, a storage fee shall be charged for each month (or part thereof) from the moment of delivery to Avit in the amount of 1% of the value of the goods (as stated on the invoice or in the Agreement). If Client wishes to do so, Client will take care of taking out insurance for the goods during the period that they are temporarily stored at Avit.
- 6.4 If Avit makes samples available to Client, Client is bound to return the samples, undamaged and in the original packaging, carriage paid, to Avit within fourteen days of receipt. If Avit shows or provides a model, sample or example, this is by way of indication only: the characteristics of the goods to be delivered may differ from the sample, model or example.
- 6.5 Services may be provided on a case-by-case basis, in the form of a continuing performance agreement (with or without the use of the strippenkaart (multi-ticket system), on a project basis or in such other form as shall be determined between the parties in the Agreement.
- 6.6 Delivery times are always indicative and do not constitute deadlines. The mere exceeding of a delivery time mentioned by Avit or agreed between the parties, regardless whether this would be agreed to be a firm date or not, does not immediately place Avit in default. Avit shall not be in default until Avit, after Client has given it notice of default in writing which notice of default includes a period that gives Avit a reasonable opportunity to fulfil its obligations as yet and which is formulated in such a complete and detailed manner that Avit is able to respond adequately, does not fulfil its obligations as yet within that period.
- 6.7 The agreed delivery time commences at the time indicated in the Agreement, or in the absence thereof, at the latest of the following times: a) on the day of the conclusion of the Agreement; b) on the day of receipt by Avit of the information to be provided by Client that is necessary for performance of the Agreement; or c) on the day of receipt by Avit of what Client may have to pay in advance under the Agreement.
- 6.8 In the event of an amendment of 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 delivery times be agreed. If any delivery time threatens to be exceeded, Avit and Client will consult to discuss the consequences of exceeding the delivery time for further planning.

- 6.9 If it has been agreed that the work agreed shall be performed in phases, Avit is entitled to postpone the start of the work that forms part of a phase until Client has approved the results of the preceding phase in writing.

## **7 Retention of title and right of retrieval**

- 7.1 Ownership of any good supplied by Avit only passes to Client after the price for the relevant good and the work relating to this good is received by Avit in full and without any set-off, and Client has also fulfilled any other conditions stipulated in the Agreement. This includes any claims by Avit against Client for compensation due to a failure to perform the Agreement.
- 7.2 If Client acts as a reseller, Client may sell and re-deliver all goods subject to Avit's retention of title to the extent that this is normal in the context of the normal operation of its business, provided that Client respects the retention of title and imposes the obligation to respect it on all subsequent purchasers of the goods concerned.
- 7.3 If Client creates a new product (partly) from goods supplied by Avit, Client shall only create that product for Avit, whereby Avit becomes the owner of the newly created product until Client has paid all amounts owed pursuant to the Agreement.
- 7.4 The consequences under property law of the retention of title of a good destined for export shall be governed by the law of the destination country if that law contains provisions that are more favourable to Avit in this regard.
- 7.5 Avit may retain the items, products, property rights, data, documents, software, databases and (interim) results of its own services received or generated in the framework of the Agreement, notwithstanding an existing obligation to surrender or transfer, until Client has paid all amounts owed to Avit.
- 7.6 Client may not encumber any of the goods delivered by Avit with any (limited) right, as long as ownership of the goods has not passed to Client. Client shall take due and proper care of the goods and keep them as recognisable property of Avit until the day of full payment in accordance with the provisions of Article 7.1.
- 7.7 If Client fails to fulfil its payment obligations towards Avit, or Avit has good reason to fear that Client will fail to fulfil its obligations, Avit is entitled to take back (or have taken back) the goods delivered to Client at the expense of Client, without judicial intervention. After recovery, Client shall be credited for the market value, which shall never exceed the original purchase price, minus the costs associated with the recovery.

## **8 Responsibilities of Client**

- 8.1 Client shall always timely provide Avit with all useful and necessary data or information for a proper performance of the Agreement, and shall lend its full cooperation, including providing access to its buildings and relevant equipment. If Client deploys its own personnel in the context of providing cooperation, this personnel shall have the necessary knowledge, experience, capacity and quality.
- 8.2 Client bears the risk of the selection, use and application in its organisation of the hardware, software, websites, databases and other products and materials and of the services to be provided by Avit, and is also responsible for the control and security procedures and adequate system management.
- 8.3 If Client makes software, websites, content, materials, database files or data on a data carrier available to Avit, these must comply with the specifications prescribed by Avit.
- 8.4 If Avit employees perform work at Client's premises, Client shall provide, free of charge, the facilities reasonably required by those employees, such as a workspace with computer, data and telecommunications facilities. The workspace and facilities shall comply with all applicable requirements concerning working conditions. Client indemnifies Avit against claims by third parties, including Avit employees, who suffer damage in connection with the performance of the Agreement as a result of acts or omissions by Client or unsafe situations in its organisation. Client shall make the house and security rules applicable within its organisation known to the employees deployed by Avit before the start of the work.
- 8.5 If telecommunications facilities are used in the performance of the Agreement (including – but not limited to – Internet, data connections, and/or SIP connections), Client is responsible for the correct choice and timely and adequate availability of these, except for those facilities that are under the direct use and

management of Avit. Avit is under no circumstances liable for damage or costs due to transmission errors, malfunctions or unavailability of these facilities.

- 8.6 Client shall ensure an environment for the equipment supplied by Avit that satisfies the requirements set by the manufacturer of that equipment with regard to, but not limited to, temperature, air humidity, power supply, technical environment requirements, etc.
- 8.7 If Client does not make the data, hardware, software or staff necessary for performance of the Agreement available to Avit, or does not do so on time or in accordance with the arrangements, or if Client does not fulfil its obligations in some other way, Avit has the right to suspend performance of the Agreement in full or in part, and to charge the ensuing costs at the usual rates, without prejudice to Avit's right to exercise any other right it may have.

## **9 Prices**

- 9.1 Unless otherwise stated, the prices are based on delivery ex works, warehouse or other (storage) location, and: a) excluding value added tax (VAT), import duties, taxes, municipal tax and/or other duties or charges which are 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 Client; c) excluding exchange rate changes insofar as they affect the original price quotation; d) without discount; and e) stated in Euro amounts. The costs arising from the principles stated under a) to c) shall be charged to Client. Article 9.3 shall not apply to this.
- 9.2 If: a) goods are delivered at a time that is more than four weeks after the date of the quotation; or b) the cost price of the goods to be delivered has risen since the time of the quotation (e.g. as a result of an increase in raw materials, wages), Avit is entitled, even if a fixed price has been agreed, to charge the price applicable at the time of delivery, in accordance with the price list applicable at that time. All quotations are made subject to such price changes.
- 9.3 If the total price increase as referred to in Article 9.2 amounts to more than 10%, Client has the right to terminate the Agreement prematurely (only for the part that has not yet been performed), with a period of notice of one calendar month, unless Avit indicates within two working days of receipt of the notification of intended termination that it still wishes to fulfil the Agreement at the price originally agreed.
- 9.4 In case of a periodic payment obligation, Avit is entitled to increase rates and/or prices for the following 12 months on 1 January of each calendar year on the basis of the Dutch CBS Service Price Index (in Dutch: DPI, 2015=100), with a comparison between the last published quarterly figure and the figure for the same quarter of the previous calendar year. If this price index is negative, the applicable rates and/or prices will not be adjusted. In addition, Avit is entitled to pass on demonstrable price increases of its third-party suppliers and third-party service providers to the Client, if and to the extent that the price increases of these third parties would be higher than the increase based on the indexation mentioned in the first sentence. However, such price adjustment will always be limited to a maximum of 80% of the final price.
- 9.5 For work on location, a minimum commitment of 8 hours will be charged, even if the actual time spent is less than 8 hours. For remote work, a minimum commitment of 2 hours applies. If the actual time spent is more than 8 hours or 2 hours, the time actually spent will be charged.
- 9.6 Outside office hours (Monday-Friday 8 a.m. – 6 p.m. Belgian time, excluding Belgian official holidays), the following surcharges on the hourly rate apply:
- a) 50% surcharge for hours between 6 p.m. and midnight (00.00) (Monday-Friday);
  - b) 100% surcharge for hours between midnight and 8 a.m. (Monday-Friday);
  - c) 100% surcharge for hours on Saturday, Sunday and public holidays.

## **10 Invoicing**

- 10.1 Goods are in principle invoiced in accordance with the provisions of Article 9.1 - 9.2.
- 10.2 With the exception of the provisions of Article 10.3 and unless otherwise agreed in writing, services will be invoiced in advance, subject to the provisions of Articles 9.1 and 9.4 - 9.6. Work carried out in addition to previously agreed work shall be invoiced separately based on monthly post-calculation.
- 10.3 If Avit invoices the services on the basis of an agreed fixed price, Client must pay 50% of the total invoice at the time the Agreement is concluded. If goods are also supplied as part of the Agreement, the same applies. After delivery or installation of the goods at Client's premises (and/or temporary storage at Avit) and as soon as more than 50% of the total hours/time to be spent on the Agreement have been spent, 40% of the

total amount shall be invoiced. The remaining 10% will be invoiced immediately after completion of the project.

- 10.4 In the case of periodic services, monthly or annual invoices shall be invoiced in advance, except for periodic services with variable components (such as cloud services, call and/or data costs), which shall be invoiced monthly in arrears on the basis of use.
- 10.5 If use is made of the Avit strippenkaart (for the performance of support work at a fixed rate or other work as laid down in an Agreement), the following applies:
- For the first contract period, Avit charges Client an amount based on the expected work, and thereafter monthly or annually an amount based on the actual use in the preceding period.
  - If Avit observes that the actual consumption during the current period exceeds the amount for the expired period, the charge for the next period will be increased to an amount that corresponds to the expected work, assuming the same scope of work for the next period.
  - If Avit observes that the actual consumption is lower than the already invoiced amount, the new strippenkaart amount shall be reduced in accordance with the method described above so that it corresponds with the expected work for the coming period, taking into account the following: if the actual consumption is less than 25% of the invoiced amount, 25% of the strippenkaart amount shall nevertheless be debited from the strippenkaart (annually) per contract period until the balance is exhausted.
  - If the strippenkaart budget within a contract period is completely used up before the end of that period, Avit shall send a new invoice immediately after reaching a zero balance for the remaining part of that period and/or for the upcoming period to supplement the last strippenkaart, which invoice shall be based on the amount of work carried out in the period for which the strippenkaart was used up. If Client does not object to the amount of the new invoice within five working days after it has been sent, the invoiced amount will be due. If an objection is made, but the parties do not reach agreement on the amount to be invoiced within one month of invoicing, Avit is entitled to suspend all activities at once, until such time as the newly invoiced amount is paid in full. All costs and losses that are the consequence of this suspension shall be borne solely by Client.
- 10.6 All monthly invoicing shall take place on the basis of direct debit unless agreed otherwise in writing. If the authorisation is withdrawn by Client before the termination of the Agreement, Avit has the right to stop all activities and deliveries at once. Any loss arising from this for Client (or third parties) is then entirely at the expense and risk of Client.
- 10.7 Complaints about invoices must be submitted in writing to Avit within fourteen days of the invoice date, failing which the invoice shall be deemed to have been accepted.

## **11 Payment**

- 11.1 Invoices from Avit must be paid by Client within thirty calendar days of the invoice date, failing which Client shall be in default without notice of default being required.
- 11.2 If an advance payment invoice is sent to Client by Avit, this invoice must be paid before the date on which the performance is scheduled to commence.
- 11.3 If payment is not received in time by Avit, Avit is entitled to suspend performance until payment is made, without Client acquiring any right to compensation.
- 11.4 From the date that Client is in default, Avit is entitled to charge Client late payment interest of 10% per year on the outstanding amount, as well as lump-sum damages equal to 10% of the outstanding amount with a minimum of EUR 150 (excluding VAT). All payments made by Client serve primarily to pay the recovery costs, then to pay the lump-sum damages and late payment interest, and then to pay the longest outstanding invoices. The above does not affect Avit's right to charge for all other costs, damage and interest.
- 11.5 Client waives any right of set-off and/or suspension.

## **12 Prepayment/security**

- 12.1 Avit is entitled at any time to request advance payment or the provision of security from Client before proceeding with the delivery.
- 12.2 If Client defaults in making the requested prepayment or provision of security, any obligation on Avit to deliver lapses, without prejudice to the right of Avit to compensation by Client for any damage, costs and

interest caused by that default on the part of Avit.

### **13 Cancellation or postponement**

- 13.1 If, after an Agreement for the supply of goods and/or services has been concluded but before delivery and/or performance has commenced, Client wishes to cancel or postpone it, Client shall owe 20% of the agreed price (plus VAT) as cancellation or postponement costs. Client shall never be entitled to cancellation or postponement after commencement of the delivery and/or performance.
- 13.2 For projects as referred to in Article 10.3, it applies that if Client cancels or postpones the Agreement before the commencement of the planned work, Client shall owe, in addition to 20% of the agreed price (plus VAT), an additional compensation for keeping capacity available by Avit for the Agreement. This additional compensation fee is calculated per scheduled FTE (full time equivalent) and depends on the time of announcement of the cancellation or postponement:
- a) if the announcement is made within 24 hours before the start of the project: 100% of the agreed hourly rate per FTE multiplied by the number of hours cancelled or postponed, with a maximum of 24 hours;
  - b) if the announcement is made between 3 days and 24 hours before the start of the project: 75% of the agreed hourly rate per FTE, multiplied by the number of hours cancelled or postponed, up to a maximum of 24 hours;
  - c) if the announcement is made between 1 week and 3 days before the start of the project: 50% of the agreed hourly rate FTE multiplied by the number of hours cancelled or postponed, up to a maximum of 24 hours.
  - d) if the announcement is made between 2 weeks and 1 week before the start of the project: 25% of the agreed hourly rate per FTE multiplied by the number of hours cancelled or postponed, with a maximum of 24 hours.

Client shall never be entitled to cancellation or postponement after commencement of the planned work.

- 13.3 The provisions of this Article apply without prejudice to Avit's right to claim full compensation, including loss of profit.

### **14 Liability**

- 14.1 The total liability of Avit due to attributable failure to perform the Agreement, or on any legal basis whatsoever, is limited to (a maximum of) the total annual order amount (excluding VAT) under the Agreement, subject to an absolute maximum of the amount that is actually paid by Avit's insurer in the case in question. If the Agreement primarily concerns a continuing performance agreement with a duration of more than one year, the order amount is set at the total of the payments (excluding VAT) which were paid by Client in the 12 months immediately preceding the attributable failure.
- 14.2 Under no circumstances shall the total liability of Avit, on whatever grounds, amount to more than EUR 500,000 (in words: five hundred thousand euros).
- 14.3 Avit's liability for damage resulting from death or physical injury shall never amount to more than EUR 1,250,000 in total (in words: one million two hundred and fifty thousand euros).
- 14.4 The liability of Avit for indirect damages, consequential damages, loss of profit, lost savings, loss of goodwill, damages due to business interruption, damages as a result of claims by third parties, damages relating to the use of items, materials or software of third parties prescribed by Client for Avit, and damages relating to the involvement of suppliers prescribed by Client for Avit, is excluded. The liability of Avit for mutilation, destruction or loss of data or documents is also excluded.
- 14.5 Avit is furthermore not liable:
- a) for damage to items belonging to Client and/or third parties that Avit had in its possession in the context of the delivery;
  - b) for damage which Client suffers as a consequence of actions by third parties (such as hackers) who, using for example the (ICT) facilities installed by Avit on behalf of Client, seek or obtain access to Client's property and/or information;
  - c) for damage incurred by Client as a result of force majeure on the part of Avit;
  - d) for damage which Client could have avoided by checking the correctness of the delivery and the soundness of the delivered goods before they are put into use.



- 14.6 The exclusions and limitations referred to in Article 14.1 to 14.5 lapse if liability in the case in question cannot be legally limited or excluded.
- 14.7 The exclusions and limitations of liability included in this Article 14 apply notwithstanding any contrary or different stipulation(s) in the Agreement, but do not affect any other more extensive or additional exclusions and limitations of liability included in these Terms and Conditions or the Agreement. The exclusions and limitations of liability included in this Article apply to all claims by Client, on any grounds whatsoever, and also apply to warranty and indemnity obligations issued by Avit. Conditions limiting or excluding liability which can be invoked against Avit in connection with the supplied goods or services by suppliers, service providers or subcontractors of Avit, may also be invoked by Avit against Client.
- 14.8 Unless performance by Avit is permanently impossible, the liability of Avit due to attributable shortcomings in performance of an Agreement only arises if Client places Avit in default immediately, in writing, setting a reasonable term for resolving the shortcomings, and if Avit continues to fail attributable to fulfil its obligations even after that period. The notice of default must contain a description of the shortcomings that is as complete and detailed as possible, so that Avit is given the opportunity to respond adequately.
- 14.9 For any right to damages to exist, Client must always report the damage to Avit in writing as soon as possible and in any case within three months of its occurrence. Any claim for compensation against Avit lapses by the simple lapse of twelve months after the claim arose.
- 14.10 Client shall indemnify Avit against any claims by third parties for product liability as a consequence of a defect in a product or system which was supplied by Client to a third party and which partly consisted of hardware, software or other materials supplied by Avit, unless and to the extent that Client proves that the damage was caused by that hardware, software or other materials supplied by Avit. Client also indemnifies Avit against claims relating to non-compliance with licences by Client and/or third parties that fall under Client's responsibility.
- 14.11 The provisions in this Article, as well as all other limitations and exclusions of liability, also apply in favour of all (legal) persons engaged by Avit in the performance of the Agreement.

## **15 Force majeure**

- 15.1 Avit is not bound to comply with any obligation, including any warranty obligation agreed between the parties or compensation for damage, if it is prevented from doing so as a result of force majeure. Force majeure is defined as a failure to fulfill obligations that cannot be attributed to Avit, is not due to Avit's fault, and Avit is not responsible for it by law, legal act or prevailing views. Force majeure for Avit is deemed to include: (i) force majeure of Avit's suppliers, (ii) failure to properly fulfil obligations by suppliers prescribed by Client to Avit, (iii) defectiveness of items, hardware, software or materials from third parties, the use of which is prescribed to Avit by Client, (iv) government measures, (v) power failure, (vi) failure of the Internet, computer network or telecommunications facilities, (vii) war, (viii) occupation of the workplace, (ix) strike, (x) general transport problems, (xi) epidemics and/or pandemics.
- 15.2 If the force majeure is, in the opinion of Avit, of a temporary nature, Avit is entitled to suspend performance of the Agreement temporarily until the circumstance constituting the force majeure no longer occurs. Terms will be extended by the period of the force majeure situation.
- 15.3 If, in the opinion of Avit, the force majeure situation is of a permanent nature, the parties shall make an arrangement concerning the full or partial dissolution of the Agreement and the consequences associated with this. A force majeure situation of a permanent nature is deemed to exist if the force majeure lasts longer than ninety days.
- 15.4 Avit is entitled to claim payment for all work performed before the force majeure circumstance occurred. That which has already been carried out on the basis of the Agreement shall be settled pro rata.
- 15.5 The party that believes it is or will be in a situation of force majeure shall notify the other party immediately.

## **16 Intellectual or industrial property rights**

- 16.1 All intellectual and industrial property rights to the software, websites, data files, hardware or other materials such as analyses, designs, documentation, reports, offers, as well as preparatory materials thereof developed or made available under the Agreement, remain exclusively with Avit, its licensors or its suppliers.

- 16.2 Client acquires only the rights of use that arise from these Terms and Conditions, the Agreement, or from the conditions of Avit's licensors and/or suppliers and/or manufacturers, in addition to the rights of use to which Client is entitled by law. Client is bound to refrain from any other or further use, including reproduction of software, websites, data files or other materials.
- 16.3 A user right accruing to Client is non-exclusive, non-transferable and non-sublicensable to third parties, and terminates immediately upon termination of the Agreement (unless expressly agreed otherwise in writing with regard to specific usage rights), as well as in the event of non-performance on the part of Client if this is not remedied by Client within a reasonable period set by Avit.
- 16.4 Client is aware that violation of a restriction on use constitutes both a material breach of the Agreement and an infringement of intellectual property rights.
- 16.5 If the parties agree in writing that an intellectual property right relating to software, websites, data files, hardware or other materials developed specifically for Client shall be transferred to Client, this shall not affect the right or the possibility for Avit to use and/or exploit the components, general principles, ideas, designs, algorithms, documentation, works, programming languages, protocols, standards and the like underlying that development, either for itself or for third parties, without any restriction. Nor does the transfer of an intellectual property right affect the right of Avit to do developments for itself or for a third party that are similar or derived from those done for Client.
- 16.6 Client is not permitted to remove or change any designation concerning the confidential nature or copyrights, brands, trade names or other intellectual or industrial property rights from the software, websites, data files, equipment or materials.
- 16.7 Even if the Agreement does not expressly provide for a right to do so, Avit is permitted to install technical facilities to protect the software, hardware, data files, websites and the like in connection with an agreed restriction on the content or duration of the right to use these objects. Client is not allowed to remove (or have removed) or bypass (or have bypassed) such technical facilities at any time.
- 16.8 If it is irrevocably established in law that the software, websites, data files, hardware or other materials developed by Avit infringes any intellectual property right belonging to a third party, or if in the judgement of Avit there is a reasonable chance that such an infringement may occur, Avit shall, if possible, ensure that Client can continue to use what is supplied or other functionally equivalent software, websites, data files, hardware or materials. Any other or further obligation on the part of Avit is excluded. The preceding obligation lapses if the breach is related to (i) materials made available by Client to Avit for use, processing or incorporation, or (ii) changes which Client has made or commissioned a third party to make to the software, website, databases, hardware or other materials without written consent from Avit.
- 16.9 Client guarantees that no third-party rights oppose the provision to Avit of hardware, software, material intended for websites (visual material, text, music, domain names, logos, hyperlinks, etc.), data files or other materials, including design material, for the purpose of use, processing, installation or incorporation (e.g. in a website). Client shall indemnify Avit against any claim by a third party based on the assertion that such provision, use, processing, installation or incorporation infringes any right of that third party.

## **17 Warranty**

- 17.1 With regard to goods from third parties (suppliers) that are supplied to Client by or via Avit (including, in any case, both hardware and software), Client has only a right to a warranty insofar as this exists on the basis of the warranty issued by the supplier concerned, or on the basis of the terms and conditions applicable between Avit and the supplier concerned. Avit therefore does not grant any rights of its own to Client in terms of warranty, but only passes on to Client, insofar as applicable and as far as possible, the rights that it itself can enforce against the suppliers in question. From the moment that Client pays the amount due for the Agreement in full, the rights that Avit can enforce against its suppliers (and/or any other parties) in respect of the supply of those goods transfer in full to Client, without any further action being required. To the extent that further actions are required, Avit shall, at the first request of Client, provide all cooperation that may reasonably be expected of it.
- 17.2 Avit shall provide Client with all relevant information so that Client can independently exercise its rights vis-à-vis the suppliers concerned. Unless agreed otherwise in writing, Client shall contact the Avit suppliers directly in order to assert the said warranty. Where possible, Avit will assist Client and/or act as an intermediary in the assertion of any rights of warranty.



- 17.3 Complaints concerning a warranty issued by Avit's suppliers must be made in accordance with the applicable conditions.
- 17.4 At the request of Client and in consultation with Avit's suppliers, Avit is prepared in specific cases (as additional work) to repair and/or modify certain hardware and/or software (originating from suppliers) in its own workshop or to assist on site by partially or fully replacing and/or modifying what is supplied.
- 17.5 With regard to software developed by Avit itself (of which the ownership and/or other relevant rights of use are held by Avit), Avit guarantees that Client acquires a right of use for the duration of the Agreement or so much longer as stipulated in the Agreement.
- 17.6 Insofar as Avit itself provides any warranty, this does not apply:
- a) if the faults or defects observed are the result of incorrect, negligent or incompetent use or are due to a cause other than the defectiveness of the material or manufacture;
  - b) in respect of "do-it-yourself" packaging and items packaged in this way;
  - c) with regard to used goods and materials;
  - d) if Client, at its own initiative, during the warranty period makes changes and/or repairs to the delivered goods or has them made;
  - e) in respect of defects which are wholly or partially the result of any government regulation regarding the nature or quality of the materials applied; and
  - f) if the faults have occurred as a result of lightning, fire or water damage, or due to other external causes or calamities.
- 17.7 Client has the obligation in respect of each delivery of goods to immediately and independently check that the delivered materials comply with the Agreement without delay. Client must report visible defects on the consignment note or to Avit immediately upon receipt of the goods. Complaints must be made in writing within fourteen calendar days of receipt of the goods. After this period has been exceeded, all possible claims lapse, and Client is deemed to have accepted what was delivered.
- 17.8 Unless agreed otherwise in writing, Avit is only bound to fulfil its warranty obligations for materials and/or services delivered within Belgium.
- 17.9 Insofar as Avit provides a warranty itself, it accepts no further obligation(s) than to replace, credit and/or repair what is delivered, at its discretion. If Avit carries out a repair, the warranty shall only cover the soundness of the performance of the agreed work.
- 17.10 Any non-compliance by Avit with warranty obligations does not release Client from its own obligations under the Agreement. If Client does not fulfil its obligations under the Agreement, or does not do so properly or in time, Avit is not bound to fulfil the relevant warranty provisions.

## **18 Processing of personal data on behalf of Client**

- 18.1 If, in the context of the Agreement, personal data are processed by Avit on behalf of Client, the General Data Protection Regulation (hereinafter: GDPR) obliges Avit and Client to make commitments in respect of the processing to be carried out by Avit that offer guarantees in respect of the technical and organisational security measures relating to the processing to be carried out. In the absence of a further, separately agreed "data processing agreement," the provisions of this Article shall apply as the obligations referred to in the GDPR. Avit is to be regarded as the "processor" and Client as the "controller".
- 18.2 Avit shall only process the personal data on the basis of written instructions from Client, and only in order to execute the Agreement. Client shall inform Avit about the subject and duration of the processing, the type of personal data and the categories of the persons concerned. Avit shall inform Client immediately if, in its opinion, an instruction constitutes a breach of the GDPR or other provisions of Union law or Member State law on data protection.
- 18.3 All personal data that Avit receives from Client in performance of the Agreement and/or collects itself is subject to an obligation of confidentiality in relation to third parties. Avit ensures that the persons authorised to process the personal data have undertaken to observe confidentiality or are bound by an appropriate legal obligation of confidentiality. The confidentiality obligation does not apply to the extent that Client has given express consent for the information to be provided to third parties, if providing the information to third parties is logically necessary in view of the nature of the Agreement, or if there is a legal obligation to provide the information to a third party. If Avit is legally obliged to provide information to a third party, Avit shall inform Client immediately to the extent that this is permitted by law.

- 18.4 Client guarantees that it will only enter personal data in a fully lawful manner or otherwise make them available to Contractor, without violating any rights of third parties. Client guarantees that the content, the use and the instruction to process the personal data are not unlawful and do not infringe any right of third parties. Client shall indemnify Avit against any (legal) claim by third parties, including supervisory bodies and data subjects, on any grounds whatsoever, in connection with claims and actions relating to this.
- 18.5 Avit shall, taking into account the nature of the processing, assist Client by means of appropriate technical and organisational measures, as far as possible, in fulfilling its obligation to respond to requests to exercise the rights of the data subject as laid down in chapter III of the GDPR. The costs associated with this cooperation shall be borne entirely by Client.
- 18.6 Avit shall, taking into account the nature of the processing and the information available to it, assist Client in complying with the obligations under Articles 32 to 36 of the GDPR. The costs associated with this cooperation shall be borne entirely by Client.
- 18.7 Avit shall take, maintain and if necessary amend appropriate technical and organisational measures to protect the personal data to be processed on behalf of Client in order to prevent loss, disclosure or any form of unlawful processing. Client acknowledges that it is fully aware of the technical and organisational measures to be taken by Avit and hereby declares that, taking account of the state of the art and the cost of implementation, they ensure an appropriate security level, given the risks involved in the processing and the nature of the data to be protected. If Client expressly requests measures which, in the opinion of Avit, cannot be regarded as appropriate technical and organisational measures, the implementation of these measures shall be fully at the expense and risk of Client, and Avit accepts no liability for any loss sustained by Client or third parties. Client shall indemnify Avit in full against any claim by third parties, including - but not limited to - fines imposed by regulators, based in any way on the assertion that the technical and organisational measures taken by Avit as referred to in the previous sentence are inadequate.
- 18.8 In addition to processing personal data within the European Economic Area, Avit is also entitled to process personal data in countries outside the European Economic Area, provided that the transfer takes place on the basis of an adequacy decision, on the basis of appropriate safeguards or on the basis of another lawful basis as referred to in Chapter V of the GDPR. At the request of Client, Avit will inform Client in which countries, outside the European Economic Area, it processes the personal data.
- 18.9 Client hereby gives Avit general authorization to use sub-processors in the processing of personal data in performance of the Agreement, subject to the applicable laws and regulations. At Client's request, Avit shall inform Client as soon as possible about the third parties it has engaged. Avit shall inform Client about intended changes concerning the addition or replacement of sub-processors, whereby Client has the option to object to these changes. If Client objects to an intended change, Client and Avit will enter into consultation to find a solution. Avit will ensure that the sub-processors take on equivalent duties to those agreed between Client and Avit in writing. Avit ensures correct compliance with these obligations by these sub-processors and is liable to Client in the event of errors by these sub-processors, as if Avit itself has made the error(s).
- 18.10 In the event of a personal data breach at Avit relating to the personal data processed on behalf of Client, Avit shall report this to Client immediately and in any case within 48 hours of discovery. Subsequently, Avit shall provide Client with at least the following information: the fact that there has been a personal data breach, as well as what the (alleged) cause of the breach is, the nature and scope of the breach, what the (currently known and/or expected) consequence is, and what the (proposed) solution is. Avit shall provide the cooperation that Client may reasonably require from Avit. After a report by Avit, Client itself will decide whether it will inform the supervisory authority and/or data subjects about the personal data breach. Client is and remains the only party responsible for any legal obligation to do so.
- 18.11 Avit shall make all information available that is necessary to demonstrate compliance with the obligations set out in this Article and to enable and contribute to audits, including inspections, by an independent auditor. An audit initiated by Principal shall always be announced in writing at least two weeks in advance and shall take place at most once a year. The costs of an audit shall be borne by Client.
- 18.12 At the end of the Agreement, Avit shall, at the choice of Client, delete the personal data or return it to Client and remove existing copies, unless storage of the personal data is required by Union or Member State law.

## **19 Confidentiality**

- 19.1 Each party undertakes to keep secret all information received from the other party that is known to be or is thought to be confidential in nature, unless a legal obligation requires disclosure of that information. The party receiving confidential information shall use it only for the purpose for which it was provided. The receiving party shall not disclose confidential information to third parties without the written consent of the disclosing party. However, the receiving party may provide confidential information to employees and third parties engaged on a need-to-know basis, whereby such employees or third parties engaged shall assume similar confidentiality obligations as those set forth in this Article.
- 19.2 The obligations set out in this Article shall not apply to information that i) is publicly known, unless this is the result of a breach of confidentiality by the receiving party, ii) was already in the possession of the receiving party prior to the date of disclosure by the disclosing party, iii) was obtained from a third party without that third party breaching any confidentiality obligation towards the disclosing party, iv) was developed independently and without the use of information from the disclosing party by the receiving party.

## **20 Ban on taking over staff**

- 20.1 During the term of the Agreement and for one year after it is terminated, Client shall only after prior written consent of Avit take the initiative to (make an offer to) employ or otherwise have employed, directly or indirectly, employees of Avit who are or have been involved in the performance of the Agreement.

## **21 Dissolution (ontbinding) and cancellation (opzegging)**

- 21.1 Either party will only be entitled to dissolve the Agreement on account of a breach if the other party imputably fails to perform essential obligations arising from the Agreement, and does not remedy this breach within a reasonable term after having received a written notice of default which is as detailed as possible and in which a reasonable term is set for remedying the breach. Payment obligations of Client and all other obligations to cooperate on the part of Client or a third party engaged by Client shall always be considered to be essential obligations under the Agreement.
- 21.2 If Client has already received goods or services in performance of the Agreement at the time of dissolution as referred to in Article 21.1, these goods or services and the related payment obligation shall not be subject to restitution. Amounts in connection with what Avit has already performed or delivered in performance of the Agreement remain due undiminished and become immediately payable at the time of dissolution.
- 21.3 If Avit proceeds in accordance with Article 21.1 to dissolve an Agreement that relates to the execution of projects as referred to in Article 10.3, on the basis of an attributable shortcoming by Client, which includes in any case the situation where Client has not (or not promptly) fulfilled its payment obligation before the start of the project, or refuses delivery of the agreed items, Client is bound to pay, in addition to the amounts due in accordance with Article 21.2, an additional amount of 50% of the price agreed corresponding with part of the Agreement which has not yet been performed or delivered, as compensation for this termination. Any loss incurred by Client as a result of such termination is entirely at its own expense and risk.
- 21.4 If an Agreement which by its nature and content does not end in completion has been entered into for an indefinite period, it may be terminated by either party in writing after proper consultation and with due observance of a notice period of 3 months. Parties shall never be liable for any compensation for termination other than as laid down in these Terms and Conditions.
- 21.5 Client shall never be entitled to terminate (for convenience) a fixed-term agreement or assignment prematurely.
- 21.6 Each of the parties may terminate all or part of the Agreement in writing with immediate effect and without notice of default if:
- a) the other party is declared bankrupt, cedes its assets, submits a request for protection against creditors in accordance with book XX of the Belgian Economic law code, or if all or a substantial part of its assets are attached;
  - b) the other party dies or is placed under guardianship;

- c) the business of the other party is wound up or terminated (other than for the purpose of a merger of companies).
- 21.7 If Client fails to pay an invoice amount or part thereof within the stipulated period and has not yet rectified this default within a reasonable period set by Avit, Avit has the right, by the mere occurrence of the circumstance referred to above, either to dissolve the Agreement without court intervention, or to claim in full any amount owed by Client on the basis of work carried out by Avit, immediately and without any warning or notice of default being required, without prejudice to its right to compensation for costs, damage and interest. Client indemnifies Avit against claims by third parties arising from or related to the dissolution referred to in the previous sentence.
- 21.8 The intra-group transfer or consolidation (for example, through legal merger) of businesses and/or legal entities belonging to the Avit Group does not entitle the Client to terminate the Agreement. For the purposes of these Terms and Conditions, Avit Group includes all legal entities and (subsidiary- and parent-) companies that are part of the economic / organisational group of companies to which Avit Systems België B.V. belongs.

## **22 Migration**

- 22.1 If the Agreement ends other than as a result of a breach by Client or due to a circumstance referred to in Article 21.6, Avit shall, at Client's request, to Client or to a third party designated by Client:
- a) transfer all hardware, data, materials, software, source codes and available documentation (in electronic form or in a further agreed form) which are the property of Client, and take measures that may reasonably be expected to ensure a careful transfer of said property and data;
  - b) to the extent necessary and to the extent that it can reasonably be expected, transfer specific knowledge regarding the systems and services managed or operated for Client;
  - c) insofar as expressly agreed, grant a licence right to software and tools of which Avit holds the intellectual property rights. In that case, the parties shall set out the conditions under which the licence is granted in a licence agreement;
  - d) to the extent necessary and to the extent that it can reasonably be expected, transfer hardware, software, any source codes and available documentation which is the property of Avit and which is deemed by the parties to be used exclusively or primarily to provide the services to Client or which is of major importance for the continuity of Client's business processes, all this to the extent that Client has paid for this hardware, software and documentation.
- 22.2 If there is a difference of opinion between the parties concerning ownership of the hardware, materials, software and available documentation, or the intellectual (property) rights thereof, it is assumed that this ownership rests with Avit, its licensors or its suppliers, unless proven otherwise on the basis of evidence to the contrary produced by Client.
- 22.3 If expressly agreed, Avit shall, on the basis of the Avit price list as it applied at the time of termination of the Agreement, during a period to be agreed after the end of the Agreement, in addition to what is stipulated in Article 22.1, offer support in order to achieve a smooth transfer of the services to Client or to a third party designated by Client.

## **23 Escrow**

- 23.1 If the parties expressly so agree, Avit can provide escrow, in which case the reasonable costs associated with this shall be borne by Client.
- 23.2 Escrow includes all undisclosed information that Client reasonably requires for error correction, maintenance and management of the standard software so that Client can continue to use it.

## **24 Final provisions**

- 24.1 These Terms and Conditions as well as any Agreement shall be exclusively governed by Belgian law. The application of the Vienna Sales Convention 1980 is excluded.
- 24.2 All disputes arising out of, in connection with or resulting from the Terms and Conditions and/or Agreements will be submitted exclusively to the competent court of Antwerp.
- 24.3 Client is not entitled to sell and/or transfer the rights and/or obligations under the Agreement to a third party. Avit is entitled at all times to involve third parties in the performance of the Agreement. Avit is also

- entitled to transfer its claims to payment of compensation to a third party.
- 24.4 After the termination of an Agreement, for whatever reason, the provisions which by their nature are intended to continue in force between the parties shall remain in force.
  - 24.5 Each clause that is contrary to mandatory provisions of Belgian law shall, as far as possible, be interpreted in such a way that the purport of the clause remains intact as far as possible, provided the provision is in accordance with the law applicable at that time. The nullity of a provision will in no case affect the validity of any other provisions. In this case, the parties will consult with the aim of agreeing on a new provision to replace the original provision, whereby the aim and purport of the original provision will be maintained as far as possible.
  - 24.6 These Terms and Conditions have been drawn up in Dutch and English. If there is any conflict about the content of these different versions, the Dutch text shall prevail.