

## **General Terms and Conditions of Purchase and Delivery for PST Business Solutions B.V.**

### **Article 1 Definitions**

The following terms are defined as follows in these General Terms and Conditions, unless explicitly otherwise indicated.

PST: PST Business Solutions B.V.;

CUSTOMER: PST's opposite party;

Software: the control and/or application software made available for use to the CUSTOMER by or on behalf of PST

Control software: operating systems, compilers and utilities

Agreement: the agreement between PST and the CUSTOMER, including the installation / purchase of a demonstration or test system of a product to be supplied / previously supplied by PST, or testing or commencing production of software, procedures or advice developed and/or supplied by PST, including the setting up, installation and connection of these, including all appendices;

Working day: a calendar day from 08.30 to 17.30, except Saturdays and Sundays and public holidays recognised in the Netherlands.

### **Article 2 General**

1. These General Terms and Conditions apply to each and every offer, quotation and agreement by means of which PST delivers goods and/or services, of any nature whatsoever, to the CUSTOMER, even if these goods or services are not specified in greater details in these Terms and Conditions. Derogations from these General Terms and Conditions will only be applicable if these are agreed explicitly in writing.

2. These Terms and Conditions apply equally to all agreements with PST in the broadest sense of the word, the realisation of which requires the involvement of third parties.

3. The applicability of any Terms and Conditions of Purchase or other Terms and Conditions of the CUSTOMER is explicitly rejected.

4. Contrary to paragraph 3, the CUSTOMER'S General Terms and Conditions will only be applicable if the following cumulative conditions have been complied with:

a. within 10 days of acceptance of these General Terms and Conditions, the CUSTOMER rejects these General Terms and Conditions – by registered letter - and declares its own General Terms and Conditions to be applicable, and

b. PST then issues a written statement accepting the applicability of the CUSTOMER'S General Terms and Conditions.

5. In the event that one or more of the stipulations of these General Terms and Conditions is or becomes null and void, the other stipulations of these General Terms and Conditions will remain fully applicable. PST and the CUSTOMER will then consult with one another in order to agree on new stipulations to replace the void / voided stipulations, taking account – where appropriate and to the greatest possible extent - of the purpose and tenor of the original stipulation.

### **Article 3 Offers and Quotations**

1. All offers and quotations are free of obligation and are issued in written form, unless PST decides against issuing a written offer for practical reasons, reasons of urgency or other reasons. The offer shall bear the date of issue, or shall be date-determinable.

2. The offers and quotations issued by PST are free of obligation; they remain valid for 30 days after the date of issue of the quotation or of the letter containing an offer, unless otherwise indicated by PST. PST will only be bound by the quotations in the event that acceptance thereof is confirmed in writing by the other party within 30 days of the date of the document to which the acceptance relates, unless otherwise indicated by PST.

3. The prices stated in the offers and quotations are exclusive of and subject to BTW (Dutch VAT) and other duties which may be imposed by the state.

4. In the event of an agreement involving amounts to be paid by the CUSTOMER at regular intervals, PST will be entitled to adjust the applicable prices and fees by written notification, giving a minimum of one month's notice.

5. In the event that the CUSTOMER does not agree to an adjustment to the prices and fees notified by PST, as referred to in article 3.4., the CUSTOMER shall notify PST to this effect within 14 days of the date on which the CUSTOMER should reasonably have received notification of the adjustment.

6. A price estimate comprising several items does not oblige PST to supply part of the goods referred to in the offer or quotation against a commensurate proportion of the indicated price, nor to perform part of the work against a commensurate proportion of the indicated price.

7. Offers or quotations do not apply automatically to future orders or repeat orders.

### **Article 4. Cooperation**

1. Regular meetings may be held with regard to the purchase, use and maintenance of software, and separate procedures agreed.

These meetings will also be used to prepare the arrangements to be made for the coming year. These arrangements will be confirmed in writing.

The following will be discussed as a minimum: software prices, maintenance fees, discount scheme(s), etc.

2. The parties will keep one another notified of any organisational and staff developments and/or changes within their organisations which have an impact on the realisation of this agreement.

3. PST will notify the CUSTOMER in good time regarding which staff member at PST is responsible for communication arising from this agreement at the time of signing.

4. The CUSTOMER will notify PST as soon as possible regarding which staff member on the CUSTOMER'S side is responsible for communication arising from this agreement at the time of signing.

### **Article 5. Realisation of the Agreement**

1. PST will realise the agreement to the best of its knowledge and ability and in accordance with the requirements of good workmanship. This realisation will be in line with scientific advances known at a given time.

2. If and inasmuch as is necessary for the proper realisation of the agreement, PST is entitled to have certain work carried out by third parties.

3. The CUSTOMER will ensure that all information which PST indicates is necessary or which the CUSTOMER should reasonably realise is necessary for the realisation of the agreement will be provided to PST in good time. In the event that the information necessary for realisation of the agreement is not provided to PST in good time, PST shall be entitled to suspend realisation of the agreement and/or charge the CUSTOMER for the extra costs arising from the delay at the usual fees. This applies equally in the event that the CUSTOMER decides to postpone, delay or cancel the project, in which case PST may be entitled to compensation from the CUSTOMER.

4. PST cannot be held liable for loss, of any nature whatsoever, resulting from PST assuming incorrect and/or incomplete information supplied by the CUSTOMER, unless this incorrectness or incompleteness should have been known by PST.

5. In the event that it is agreed that the agreement will be realised in phases, PST can suspend realisation of the elements belonging to a subsequent phase until such a time as the CUSTOMER has issued written approval of the results of the previous phase.
6. In the event that work is carried out by PST or by third parties engaged by PST in the context of the order at the CUSTOMER'S location or at a location indicated by the CUSTOMER, the CUSTOMER will provide said employees with such facilities as they shall reasonably request, at no charge.
7. The CUSTOMER indemnifies PST against any claims from third parties who incur loss in the context of realisation of the agreement, and which loss can be attributed to the CUSTOMER.

#### **Article 6. Prices, fees and payments**

1. PST will ensure that the price-quality ratio of its Goods and Services, as well as the fees it charges, are in line with market developments.
2. PST will send a single copy of its invoices to CUSTOMER, attn: /.../ P.O. Box / ... / with reference to this agreement. Invoicing and payment will take place in Dutch currency. All prices are exclusive of and subject to any VAT payable. Payment will be made within 21 days of the invoice date, without any discount or compensation, however this is referred to, unless otherwise agreed in writing. Objections concerning the amounts charged do not suspend the payment obligation.
3. All fees are based in part on the salaries and price index applicable at the time the agreement is signed, including the index of salary and social costs, cost of materials, travel and accommodation expenses, etc. Adjustments to the fees will be notified by PST to the CUSTOMER in writing, indicating the basis and method of calculation.
4. The price of the software is the price indicated on the price list valid in the Netherlands for PST for the software in question at the moment the order is accepted. The prices are in euros, unless otherwise indicated.  
Generally speaking, price increases are not applied immediately on publication of the new price list to software on order.
5. The price of maintenance and user support for licensed software is usually calculated as a percentage of the price for the software, and charged to the CUSTOMER in addition to the software price, in the event that the customer wishes to avail itself of maintenance and user support.
  - Any overdue maintenance and user support and possible costs relating to new versions of the software may be charged if the CUSTOMER wishes to avail itself of maintenance and user support, and has not purchased maintenance and user support along with the software.
  - Maintenance and user support are charged by PST to the CUSTOMER annually per calendar year. Cancellation or termination by the CUSTOMER with respect to the subsequent year will take place in writing, with due observance of a minimum period of notice of 3 months before the end of the current year. In the event that notice of termination is given after that time, PST will charge the maintenance and user support costs for the subsequent year in full. The CUSTOMER can therefore also make use of these services. The notice of termination will then apply for the year thereafter.
6. Any import duties and costs for storage, packaging, transport, insurance and delivery will be charged to the CUSTOMER.
7. At no time will payments for software, maintenance or user support be reimbursed.
8. In the event that the CUSTOMER remains in default of payment within 21 days, the CUSTOMER shall be in default *ipso jure*. The CUSTOMER will then owe interest of 1% per month, unless the statutory rate of interest is higher, in which case the statutory rate of interest will apply. Interest on the due amount will be calculated from the moment that the CUSTOMER is in default until the moment of payment in full of the total amount.
9. In the event of the liquidation, bankruptcy, dissolution of the company or attachment of the CUSTOMER, or the granting of protection from its creditors to the CUSTOMER, PST's claims against the CUSTOMER will be immediately due and payable.
10. PST is entitled to apply payments made by the CUSTOMER to settle the costs, then the interest and finally the principal amount and the current interest.
11. PST may refuse an offer of payment in the event that the CUSTOMER indicates a different sequence for application, without being in default.
12. PST can refuse full settlement of the principal amount in the event that this does not also cover the current and incurred interest and costs.
13. In the event that payment is made within 21 days of the invoice date, PST will not charge a surcharge.

#### **Article 7. Duration and termination**

1. Each agreement between PST and the CUSTOMER will come into effect once both parties have signed it.  
The agreement is entered into for the period that the CUSTOMER has PST software in use and/or for the period that the software is being maintained by PST.
2. Each party is authorised to terminate the agreement fully or in part for the future, and/or cancel an order, with immediate effect, without requiring any notice of default or prior judicial intervention, in the event that:
  - the other party applies for protection from its creditors;
  - the other party is declared bankrupt;
  - attachment is placed on the goods made available in the context of this agreement by or on behalf of the other party, and this attachment is not removed within a short period of time;
  - the other party is a legal entity and is dissolved;
  - control of or the deciding vote in the other party passes to a third party.
3. Invoking dissolution will take place by registered letter.
4. Termination or dissolution of this agreement will not release the parties from their current obligations ensuing from it.  
Termination or dissolution of this agreement will expressly not release the parties from the stipulations relating to: secrecy, liability, intellectual property, takeover clause, applicable law and competent court.
5. Maintenance and user support will be for a minimum period of one full calendar year. A proportionate amount will be charged to 31 December of the year in which the software is purchased. After this, maintenance and user support will be charged by PST to the CUSTOMER annually per calendar year. Cancellation or termination by the CUSTOMER with respect to the subsequent year shall take place in writing, with due observance of a minimum period of notice of 3 months before the end of the current year. In the event that notice of termination is given after that time, PST will charge the maintenance and user support costs for the subsequent year in full. The CUSTOMER can therefore also make use of these services. The notice of termination will then apply for the year thereafter.

#### **Article 8. Location requirements**

1. PST declares that it is prepared to ensure that its staff and/or third parties engaged by PST will observe any internal rules for staff and non-staff applicable at any time within the CUSTOMER'S business. These internal rules shall not impose any unreasonable standards regarding personal aspects of staff engaged by PST in the realisation of this agreement.

2. Only persons notified by PST to the CUSTOMER will be granted access to the CUSTOMER's premises. The CUSTOMER is authorised to refuse access to any person.
3. PST will notify the responsible staff member at the CUSTOMER in writing each time a PST employee is due to appear at the CUSTOMER's premises for the first time in the context of the realisation of this agreement.
4. In the event that the employee with whom the CUSTOMER has normally worked no longer works for or on behalf of PST at any time, PST will notify the responsible staff member at the CUSTOMER to this effect in writing. In the event of instant dismissal, or in the event that PST expects other problems, PST will notify the CUSTOMER to this effect immediately.
5. If and inasmuch as the realisation of the agreement could result in any hindrance to the work of third parties, including work by the CUSTOMER on site and/or use of goods on the premises, such as computer systems, for example, PST will notify the CUSTOMER to this effect in advance. PST will perform its work with due observance of the CUSTOMER's instructions.

#### **Article 9. Confidentiality**

1. PST recognises that the existence and content of the relationship with the CUSTOMER, as well as the data / information (including computer software) of which it takes cognisance in the context of realisation of the work for the CUSTOMER, are of a strictly confidential nature.
2. The CUSTOMER will in no way, either directly or indirectly, either verbally, in writing or otherwise, make known to third parties the existence or content of the relationship with PST, as well as the data / information of which it takes cognisance, except with the prior written permission of PST. This obligation will apply both during the period of this agreement and after the end thereof.
3. With regard to all data / information originating from PST which - irrespective of the form thereof or type of data carrier - in the possession of or issued to the CUSTOMER, the CUSTOMER enters into the obligation:
  - a. to take all reasonable measures to ensure safe keeping or storage;
  - b. not to use the data / information for any purpose other than the agreed one;
  - c. not to retain possession of the data / information any longer than is reasonably deemed necessary by PST for the realisation of the agreed obligations, and to make available to PST this data, including copies made, immediately after the completion of the obligations in question, or, with PST's permission, to destroy them;
  - d. only to have the agreed obligations performed by persons who PST may reasonably assume are reliable;
  - e. to cooperate in monitoring by or on behalf of PST of the storage and use of data;
4. The CUSTOMER will also make every effort to ensure that its staff and/or third parties engaged by it are aware of the above obligations and comply strictly with them.  
As necessary, it will ensure that the employees and third parties involved in the work sign a confidentiality agreement.

#### **Article 10. Legal requirements**

1. PST guarantees that the software it supplies complies with the provisions of mandatory law applicable in the Netherlands at the time of delivery and guarantees that the CUSTOMER will obtain any permits necessary for use of the software. PST will discuss with the CUSTOMER relevant legislation due to come into effect with the CUSTOMER, and modify its software to the new regulations at the CUSTOMER's request, at the applicable prices or fees.
2. If at any point statutory ergonomic regulations come into effect, PST commits itself, now for then, inasmuch as can reasonably be expected of it, to modify its software to meet the statutory requirements, under conditions and against prices and fees to be agreed.
3. The parties declare, now for then, that they are prepared to consult with one another for the purpose of modifying this agreement in the event that legislative amendments affect the contents of this agreement.

#### **Article 11. Intellectual property**

1. The CUSTOMER indemnifies PST against claims from third parties relating to intellectual property rights to materials or data provided by the CUSTOMER and used in the realisation of the agreement.
2. In the event that the CUSTOMER provides PST with data carriers, electronic files or software, etc., the CUSTOMER guarantees that this will not result in infringements of property rights or copyrights, and that the data carriers, electronic files or software are free of viruses and defects.
3. Without prejudice to the other provisions of these General Terms and Conditions, PST reserves the rights and authorisations to which PST is entitled under the Copyright Act.
4. The CUSTOMER is not permitted to modify the goods, unless this is normal due to the nature of the goods delivered, or it has been agreed otherwise in writing.
5. Any designs, software or other materials or electronic files created in the context of the agreement will remain the property of PST, irrespective of whether these have been made available to the CUSTOMER or to third parties, unless otherwise agreed.
6. All documents issued by PST, such as reports, advice, agreements, designs, software, etc., are intended solely for use by the CUSTOMER and may not be reproduced, published or made available to third parties without the prior permission of PST, unless otherwise dictated by the nature of the documents.
7. PST reserves the right to use the knowledge acquired in the realisation of the work for other purposes, inasmuch as no confidential information is made available to third parties in this context.

#### **Article 12. Force Majeure**

1. The parties are not required to comply with any obligation if they are unable to do so as a consequence of a situation which is not the result of negligence, and cannot be deemed its responsibility under the law, by virtue of a legal act or in accordance with generally accepted standards.
2. In addition to that which is understood by the term *force majeure* in law and case law, it will be deemed in these General Terms and Conditions to mean all external causes, foreseen or unforeseen, on which PST cannot exercise any influence, but as a result of which PST is unable to meet its obligations. This will include labour strikes at PST's company.
3. PST will also be entitled to rely on *force majeure* in the event that the circumstance hindering (further) compliance occurs after PST should have met its obligations.
4. The parties are entitled to suspend the obligations arising from the agreement for as long as the *force majeure* persists. In the event that this period persists for more than two months, each of the parties will be entitled to dissolve the agreement, without the obligation on either party to pay compensation for loss to the other party.
5. Inasmuch as PST has already complied with part of its obligations arising from this agreement at the time the *force majeure* occurs, and an independent value can be attributed to the part complied with or still to be complied with, PST shall be entitled to invoice the part complied with or to be complied with separately. The CUSTOMER is obliged to settle this invoice in full as if it were a separate agreement.

#### **Article 13. Liability**

1. In the event that PST may be held liable, said liability shall be limited to that stipulated in this provision.
2. In the event that PST is liable for direct loss, said liability will be limited to a maximum of the amount to be paid out by PST's insurers, or at any rate up to a maximum of twice the invoice amount, or at any rate that portion of the order to which the liability relates. PST's liability for direct loss will at all times be limited to a maximum of € 11,500.00 (in words: eleven thousand five hundred euros) for all occurrences together.
3. Contrary to that stipulated in paragraph 2 of this article, in the event of an order with a duration exceeding one month, liability is further limited to the portion of the fee owed for the final month.
4. Direct loss will be deemed solely to mean:
  - the reasonable costs incurred in establishing the cause and scale of the loss, inasmuch as the establishment relates to loss within the meaning of these terms and conditions;
  - any reasonable costs incurred in bringing the faulty performance by PST in line with the agreement, unless this cannot be attributed to PST;
  - reasonable costs incurred in the prevention or limitation of loss, in as much as the CUSTOMER can show that these costs have resulted in a limitation of direct loss within the meaning of these terms and conditions.
5. PST will at no time be liable for indirect loss, including consequential loss, loss of profits, missed savings and loss resulting from business delays, etc.

#### **Article 14. Software**

1. If special attention for the following is requested by the CUSTOMER, PST will provide in writing a functional and/or technical description of the software, an indication of the form (source code and/or object code) in which the software is supplied, an indication of the type of data carrier on which it will be supplied and whether this software includes documentation or not.
2. PST guarantees that it, as owner/copyright holder/supplier/distributor, is entitled to have access to the software in question, irrespective of whether the CUSTOMER has requested the special attention for the software referred to in paragraph 1 of this article.

#### **Article 15. Documentation**

1. PST can provide the CUSTOMER with user and/or operating manuals on the functionality offered, use and management of the software supplied by PST.  
In the case of licence forms involving a physical delivery, one user manual and/or one operating manual will be supplied. In other cases, such user manuals and/or operating manuals must be ordered separately.
2. PST grants the CUSTOMER the right to process PST user manuals and to reproduce them without limit for its own use within its organisation.

#### **Article 16. Testing**

Before purchasing the software, the CUSTOMER may decide to carry out research into whether the software in combination with the equipment in question meets the technical and functional requirements set by the CUSTOMER. This research will take the form of a series of tests on / in combination with equipment set up in the CUSTOMER's test area or elsewhere.

The following procedure will be followed:

1. PST will supply the software which has been tested and approved by the CUSTOMER, along with the appropriate documentation.
2. The CUSTOMER will fully test the technical and functional operation of the software to be assessed in combination with the equipment on a test machine at the CUSTOMER's premises. The content of the tests will be agreed in writing.
3. a. If it approves the software, the CUSTOMER will inform PST to this effect in writing. If the CUSTOMER deems it necessary, the software will then be subjected to a practical test in a number of locations, to be determined by the CUSTOMER. The CUSTOMER will notify PST of these locations prior to such a test. If the CUSTOMER deems the test to have been successful, the software will be deemed approved as of the end of the test period, and from that moment the other stipulations of the agreement will be applicable, and delivery will take place immediately thereafter.  
If the CUSTOMER has not notified PST within four weeks of PST receiving the written approval regarding whether the practical test has been successful or not, the test will be deemed to have been successful and the software deemed approved.
- b. If the CUSTOMER rejects the software on the test machine or considers the practical test to have been unsuccessful, it will also notify PST to this effect, giving reasons. It may be decided in consultation to retest the software after a possible modification by PST.

#### **Article 17. Ordering and delivery**

1. PST will provide the CUSTOMER as quickly as possible with insight into the delivery times for the software, and into other future changes to the product range.
2. In the event that the CUSTOMER orders software with a licence form, involving a physical delivery, this delivery will take place at the location indicated by the CUSTOMER when ordering.
3. In the event that the CUSTOMER orders software with a licence form, not involving a physical delivery, this delivery will be deemed to have taken place after order confirmation by PST to the CUSTOMER, i.e. by e-mail or the usage of File Transfer Protocol.

#### **Article 18. Acceptance of standard software**

1. Standard software supplied with a licence form for copyright will be deemed to have been accepted at the moment of delivery.
2. With regard to standard software which is physically supplied to the CUSTOMER, acceptance will be deemed to mean: checking the software for a complete delivery, the correct release and whether the software in question actually functions.
3. After successful completion of the acceptance test by the CUSTOMER, the CUSTOMER will immediately notify PST to this effect in writing. The date of the successful completion of the test will be deemed to be the date of acceptance.
4. If the software is not accepted, the CUSTOMER will immediately notify PST to this effect in writing, giving its reasons for non-acceptance.
5. In the event that PST has not received notice from the CUSTOMER regarding acceptance within one month of delivery, the software will be deemed to have been accepted one month after the delivery date.
6. The latest date for acceptance is 5 weeks (35 calendar days) after the delivery date.

#### **Article 19: Retention of title**

1. All goods delivered by PST will remain the property of PST until such a time as the CUSTOMER has met all its obligations arising from all agreements entered into with PST.

2. The CUSTOMER will not be entitled to pledge or encumber in any other way goods which are subject to this retention of title.
3. In the event that PST wishes to exercise the property rights referred to in this article, the CUSTOMER grants, now for the first time, its unconditional and irrevocable permission to PST or third parties to be indicated by PST to enter all the premises in which the property of PST may be located and to repossess such items.

#### **Article 20. Transfer of Risk**

1. Until the time of actual physical delivery, the risk of damage to or loss of the data carriers and/or software will be borne by PST. As of that moment, the CUSTOMER will bear said risk, unless the damage or loss is the result of negligence on the part of PST or on the part of persons engaged by PST in the realisation of this agreement. In the latter case, PST will replace the damaged or lost software at no charge with an identical version and equivalent data carrier(s) for the replacement software.
2. In the event that the data carriers and/or the software are damaged or lost while they are at the CUSTOMER's risk, PST will prioritise replacing the version of the software made available with a copy of the same version against payment of the reproduction costs.

#### **Article 21. Software right of use**

1. The CUSTOMER acquires a non-exclusive temporary right of use of the software, which right of use commences on the date of acceptance of the software and ends on termination of the agreement between the parties, in whichever form said termination takes place.

Before the date of acceptance, the CUSTOMER is entitled to install the software and to test it in the context of acceptance.

2. The right of use covers *inter alia*:

- a. use of the software on equipment referred to in Appendix 1 of the Software Licence Agreement and in combination with other computer equipment, whether or not supplied by PST.
- b. use of the documentation accompanying the software in support of use of the software;
- c. the right to remove software from a piece of equipment and to transfer it to another piece of equipment, but only after written notification to this effect to PST and after any supplementary payments in this context have been made in full and/or amendments to agreements have been fully realised;
- d. use limited to fixed-location / designated equipment:

the use is limited to use of the software on the equipment and/or logical partitions (LPA) described in Appendix 1 of the Software Licence Agreement, including the maximum number of computers and/or logical partitions (LPA) indicated in Appendix 1 of the Software Licence Agreement.

- In the event that the software in use temporarily cannot be used on the equipment originally designated, the CUSTOMER is entitled to lease or rent the software from PST for the duration of such a period for use on other equipment, including equipment installed at an external alternative location. The CUSTOMER will notify PST in writing to this effect as soon as such a situation occurs. As quickly as possible after the end of the temporary use on this other equipment, and no later than 5 days thereafter, the CUSTOMER will ensure that the software is fully removed from this equipment.

In the event that security measures have been included in the software to ensure that modifications to the software are necessary if the software is transferred to replacement equipment, the CUSTOMER will only be entitled to perform said modifications after receiving the express written permission of PST to this effect. If PST is asked to implement these modifications, it will do so at the applicable fees whenever possible.

- If the software provided in use is to be used on equipment other than the originally designated equipment or other than the equipment on which it is currently being used, the CUSTOMER will notify PST immediately in writing to this effect as soon as such a situation occurs. PST will charge the CUSTOMER a minimum of €250 for administration costs and additional licence fees as appropriate, plus additional maintenance costs as appropriate, in accordance with the applicable fees, per modified line of programming as described in Appendix 1 of the Software Licence Agreement. As soon as possible - at any rate within 5 working days - after invoicing by PST, the CUSTOMER will ensure that the software is fully removed from the equipment in question.

In the event that security measures have been included in the software to ensure that modifications to the software are necessary if the software is transferred to replacement equipment, the CUSTOMER will only be entitled to perform said modifications after receiving the express written permission of PST to this effect. If PST is asked to implement these modifications, it will do so at the applicable fees whenever possible;

f. simultaneous use / server:

simultaneous use of the software by the number of users indicated in Appendix 1 of the Software Licence Agreement, involving one or more copies of the software being loaded (wholly or partly, temporarily or permanently) from central computer equipment into the working memories and/or stored on the hard disks of the computer equipment of the users in question.

3. use will be deemed to include:

- copying the software into the memory / working memory of the computer equipment in connection with the actual use thereof;
- copying to and storage of the software on the hard disk or other data carrier(s) with which the CUSTOMER wishes to make use of the software;
- creation of back-up copies of the software and using these copies in the event of destruction and/or damage;
- creation of copies of the software for test purposes and the implementation of tests of the software;
- electronic transmission of the software or parts thereof, inasmuch as this is in accordance with the use thereof described in this agreement.

4. This agreement does not include any transfer of PST's patent rights, copyrights or trademark rights to the software made available for use, unless otherwise agreed in writing.

5. The right of use is not transferable, unless PST has granted written permission to this effect.

PST will not refuse this permission if the CUSTOMER transfers the equipment on which the software is installed to third parties and notifies PST to this effect prior to the transfer. In the event of such a transfer to a third party, PST will consult with said third party regarding the applicable conditions and payments.

#### **Article 22. Custody of software source codes**

At the CUSTOMER's request, separate arrangements will be made regarding providing custody of the source codes for the software delivered to the CUSTOMER in the context of this agreement.

#### **Article 23. Guarantee**

1. PST guarantees that the software is of good quality and is suitable for the purpose for which it is intended. Technical and functional characteristics of the software will comply, as a minimum, with the description in publicity materials, quotations, letters, manuals and other descriptions by PST and/or PST's suppliers, inasmuch as these have been made known to the CUSTOMER.
2. The CUSTOMER will notify PST of the nature and scale of each defect in the manner indicated by PST, as soon as the defect or the consequences thereof reasonably become apparent.

#### **Article 24. Diseases**

1. PST will make the greatest possible effort to ensure that the software supplied by PST, as well as the software used by PST in maintenance work and used at the time of delivery does not contain any diseases, such as time bombs, Trojan horses or viruses. In the event of the discovery of such a disease, or the possible presence thereof, PST will immediately notify the CUSTOMER to this effect and will do everything possible to prevent or solve any problems.
2. The presence of a disease which implements modifications to the software will not have any impact on the maintenance obligation on PST, irrespective of who is responsible for the presence of the disease. Inasmuch as no guarantee or maintenance obligation exists, PST declares that it is prepared to repair faults caused by diseases on the basis of the applicable fees.

#### **Article 25. Reverse engineering**

1. The term reverse engineering is deemed to mean the analysis and processing of the object code of the software, for the purpose of accessing the software's source code.
2. The CUSTOMER is only permitted to perform reverse engineering in such cases as it is authorised to maintain the software itself, and at all times after the CUSTOMER has notified PST to this effect a reasonable period in advance of the reverse engineering, with a minimum of 5 working days.

#### **Article 26. Maintenance: Description and Consequences**

1. The term software maintenance is deemed to mean:
  - a. supplying user support;
  - b. remedying failures;
  - c. issuing new versions and/or releases for the purpose of:
    - remedying faults in the standard software;
    - increasing/improving the functionality and/or performance, although solely at the discretion of PST;
    - modifying the software to comply with new equipment (releases or versions) and/or operating software (releases or versions), in line with existing equipment and/or operating software within a range of equipment and to be taken into use by the CUSTOMER.

#### **Article 28. User support**

1. This section of the agreement relates to the support for use of the software.
2. Support consists of providing advice by telephone, fax or email regarding the use and function of the software.
3. Support may be requested during working days and will be provided exclusively to employees of the CUSTOMER.
4. PST will establish contact between a PST employee and the person who submitted the request on behalf of the CUSTOMER as quickly as possible, and at any rate within 24 hours of submission of the request for support.

#### **Article 28. Notification of faults and failure procedure**

1. notification of faults may take place during working days, in a manner indicated by PST and exclusively by employees of the CUSTOMER. In the event that the CUSTOMER has not paid maintenance and user-support fees or in the event that the fault or failure cannot be remedied at no cost on the basis of the maintenance stipulations, PST will charge the CUSTOMER an amount for this work in accordance with the applicable fees. The CUSTOMER enters into the obligation to pay in full this amount within the applicable payment term set by PST.
2. Notifications of faults can only relate to the releases and/or versions supported by PST. PST will inform the CUSTOMER by letter, email or by a reference on its website regarding new releases.
3. The purpose of the failure procedure is:
  - 3.1. To get the software working again;  
In order to achieve this, the first action will always be geared towards working around the problem. This will be given priority ahead of actual remedying of the fault in the software.
  - 3.2. Once point 3.1 has been achieved, PST will start remedying the fault, in which context the fault will be treated as a priority 3 failure (unless otherwise agreed).
4. A Priority Code is assigned to each notification relating to faults in the software. The priority category under which the failure should be processed is established by the CUSTOMER, as appropriate in consultation with PST.
5. The appropriate activities, in accordance with the table below, are then carried out by PST on the basis of this Priority Code.  
Priority Code 1:  
Situation: the software cannot be used; critical impact on the production environment; situation requires immediate solution.  
Action: PST will take action as quickly as possible after notification which should result in a solution, and will persevere until such a time as an acceptable solution becomes available, or until it becomes apparent that further investigation is necessary, in combination with third parties as appropriate.  
Priority Code 2:  
Situation: the software is operational but subject to serious limitations; a bypass is available; the situation requires a rapid solution.  
Action: as quickly as possible after notification, PST will take every action necessary to arrive at a solution.  
Priority Code 3:  
Situation: the software is operational to a limited extent.  
Action: within an acceptable period after notification, PST will take every action necessary to arrive at a solution.  
Priority Code 4:  
Situation: the CUSTOMER is requesting improvements to the software, for example following changes of specification or changed requirements on the part of the CUSTOMER.  
Action: where possible, PST will accept the request for improvement to the software and at the appropriate time will honour the request or ask its suppliers to do so.  
In the case of Priority 1 or 2 fault notifications, the actions indicated will be carried out immediately after the initial telephone contact. Written confirmation of all notified problems must be made by the CUSTOMER in a manner indicated by PST. The CUSTOMER will make every effort to supply PST with all relevant information to enable analysis of the fault notification.  
In the event that PST has been unable to realise an acceptable solution for the CUSTOMER within 24 hours or by the following working day, or if it becomes clear that the solution will require more time, PST may bring in additional manpower, including engaging specialists employed by third parties if necessary.
6. The obligation on PST to maintain the software shall lapse in the event that the CUSTOMER implements modifications to the software or has such modifications carried out by third parties, without PST's prior permission. The obligation on the CUSTOMER to pay appropriate maintenance and user support fees will not lapse, however.

**Article 29. New versions and releases**

1. New versions and releases will be offered to the CUSTOMER by PST. In the event that the CUSTOMER has taken out a maintenance contract with regard to the software, the CUSTOMER will not owe any additional payment for taking into use a new version or release.

The CUSTOMER is not required to purchase a new version or release offered by PST.

2. Modifications and/or additions to the supplied software, or replacement with new software, including new releases or version, will at not time result in limitations to the applications and/or application options of the equipment and/or software, wheth er or not in combination with existing files.

**Article 30. Maintenance by CUSTOMER or by third party**

1. The CUSTOMER is entitled to perform all or part of the maintenance work on the software itself or have it carried out by a third party:

a. in the event that PST applies for protection from its creditors, its company is dissolved or declared bankrupt or the agreement is dissolved by PST.

b. in the event that the CUSTOMER has a genuine interest in continuing to use an old release of the software, which release PST no longer supports, but solely with the prior written permission of PST. The CUSTOMER must also demonstrate its interest in continuing to use an old release.

2. In such cases, PST enters into the obligation to cooperate in this, *inter alia* by providing the necessary information and the tools needed for this purpose, on the basis of the applicable fees.

3. The stipulations of the Confidentiality clause apply unimpaired, on the understanding that the CUSTOMER is entitled to engage reliable third parties for the maintenance of the software under imposition of strict provisions of confidentiality.

**Article 31. Non-recruitment of staff**

For the duration of the agreement and one year after termination thereof, the CUSTOMER shall not employ, in any way whatsoever, employees of PST or of companies engaged by PST in the realisation of this agreement and who have been involved in the realisation of this agreement, or engage said persons to work for the CUSTOMER in any way, directly or indirectly, without full prior consultation with PST. In the event that this does occur, PST shall be entitled to demand immediately payable compensation for loss of € 25,000, as well as any loss of profits incurred, and the CUSTOMER hereby enters into the obligation to pay said compensation in full within 10 days of the date of the invoice / letter received from PST in this regard.

**Article 32. Jurisdiction clause**

1. The court in the city in which PST has its place of business is exclusively competent to hear disputes, unless the subdistrict court is competent. PST will nevertheless be authorised to put the dispute before the court competent in law.

2. The law of the Netherlands is applicable to each agreement between PST and the CUSTOMER.

3. The applicability of the Vienna Sales Convention 1980 is explicitly excluded.

These Terms and Conditions were deposited on 31 July 2003 in the Netherlands with the Chamber of Commerce under number 30159013.

PST Business Solutions B.V., Tiel, The Netherlands, 16 June 2004.