

# MEDIAAN/ABS B.V. General Terms and Conditions

## General Terms and Conditions of Mediaan/ABS B.V.

### 1.1 Definitions

In these terms and conditions, the following terms are defined as stated below:

- *materials*: all systems, procedures, methods, models, diagrams, software, documentation, work instructions and hardcopies made available to us or by us within the framework of the execution of the agreed work or services.
- *information carriers*: all forms, magnetic tapes and disks and all other media on which data have been or can be recorded.
- *equipment*: all machines and systems, including so-called peripheral equipment, that is used to record or process data on information carriers, as well as the components that form part of that.
- *acceptance test*: the test as described in article 4.

### 2.0 Applicability of the General Terms and Conditions of Mediaan

- 2.1 These terms and conditions apply to all offers and agreements under which we supply goods and/or services, regardless of the nature thereof and however named, to the client.
- 2.2 Departures from and additions to these general terms and conditions are valid only if agreed in writing by the parties.
- 2.3 The applicability of any general terms and conditions of the client is explicitly rejected.

### 3.0 Offer and Agreement

- 3.1 All our offers are always subject to contract, unless we make a binding offer, as referred to in the following paragraph.
- 3.2 An offer is only binding, if made by us in writing, stating the term of validity of the offer. Acceptance must be in writing within the aforesaid term, failing which the offer will lapse.
- 3.3 With the exception of the provisions of the previous paragraph, we will only be bound subject to our written and explicit acceptance of an assignment.
- 3.4 The fact that we do not always require strict compliance with these terms and conditions does not mean that these terms and conditions do not (or no longer) apply, or that we would lose the right to require the strict compliance with these terms and conditions in similar future instances.

### 4.0 Acceptance

- 4.1 In the event no acceptance test has been agreed, the client will accept the software in the state in which it is at the time of delivery, thus inclusive of all visible and hidden errors and faults, without prejudice to our obligations by virtue of the warranty scheme of paragraph 7. In the aforesaid event, the software will be deemed accepted by the client upon delivery or, if an installation to be performed by us has been agreed, after completion thereof.
- 4.2 If an acceptance test has been agreed, the parties will decide on procedures by mutual consultation with regard to the method of operation for conducting this test. The client will decide on the contents of the test. In that event, these arrangements will form part of the agreement entered into between the parties.
- 4.3 If the client's data required for the described inspection or test work are not available to us, or are not available in time or in accordance with the agreement, our work and/or services will be deemed to have been accepted by the client. In all other cases, the procedure as described below applies.
- 4.4 Within 5 working days of completing the implementation, the client will, together with us, subject the software to the acceptance test.
- 4.5 After the acceptance test has been conducted, the parties will draw up a report and sign it. This report will provide a binding record of the faults that manifest themselves in the software and, furthermore, state whether the software has been accepted or rejected by the client. In the latter case, the grounds on which the software has been rejected will be included in the report as well, again in the form of a binding record. If no grounds are included, the software will still be deemed accepted, except for the faults.
- 4.6 Minor faults, which are deemed to include faults that do not prevent the commissioning of the software, will not form reason to withhold the approval, without prejudice to our obligation to repair these faults free of charge.
- 4.7 We will repair the software faults, at our expense, within 30 days of the date of the report in which these faults have been recorded.
- 4.8 If the client did not approve of the software after the first execution of the acceptance test, the acceptance test will be repeated at the latest within 5 working days of the repair date. A binding report will be drawn up of this too.
- 4.9 If the client did not approve of the software after the second execution of the acceptance test, the acceptance test will be repeated at the latest within 5 days of the repair date. The third report will include a binding record as to whether the faults listed in the second report have been repaired and/or whether the software has been accepted/rejected at this point, with regard to which the provisions of paragraph 6 apply by analogy.
- 4.10 If the software is once again rejected by the client in the third acceptance test, we will, contrary to the provisions of articles 17 and 18 and without prior demand or notice of default, be in breach of contract and, with due observance of the provisions of these terms and conditions and the agreement, be liable for the damage suffered by the client, subject to a maximum amount of the invoices paid by the client, exclusive of turnover tax, yet never exceeding the amount to be paid out by our liability insurance in the relevant case.

### 5.0 Cooperation by the client

- 5.1 The client will at all times render all assistance and provide us with all data and information deemed necessary or useful by us in order to deliver on the work, services and/or supplies that we have been instructed to deliver. The client warrants the correctness and completeness of the data, information, designs and specifications provided by it to us.
- 5.2 If it has been agreed that the client will make available equipment, materials or data on information carriers, it will do so at its own risk and expense, particularly, but not limited to, where this concerns the presence of viruses, and these must meet the (technical) specifications necessary for the execution of the work and/or services.
- 5.3 The client is responsible for the use and correct application in its organisation of the equipment, software and services to be provided by us, as well as for the administration and calculation methods to be applied and for the security of data. If the client, as part of

the execution of the agreement, deploys (auxiliary) personnel, this (auxiliary) personnel will have the necessary knowledge and experience.

- 5.4 The client will ensure that the space in which we perform our work at the client's is or will be brought in line with the requirements to be set by us in terms of temperature, humidity, freedom from draughts, power and water supply, and other environmental requirements and that these requirements are continuously maintained.
- 5.5 If the data necessary for the execution of the work and/or services and/or supplies are not made available to us, or are not made available in time or in accordance with the agreements, or if the client otherwise fails to fulfil its obligations, it can lead to suspension of the execution of the work and/or services and/or supplies and to the client being charged additional costs in accordance with our usual rates.

### 6.0 Changes

- 6.1 We are never obliged to honour a request for changes and/or additions to the agreed work and/or services and/or supplies.
- 6.2 If we do honour such a request, we will do so explicitly and in writing.
- 6.3 A change and/or addition can lead to a change in the agreed price.
- 6.4 Contract extras and additional supplies are always charged to the client in accordance with our rates applicable at that time.
- 6.5 Although contract reductions can lead to a reduction in the agreed price, we reserve the right to charge the client a reasonable sum in consideration of the costs incurred for lost man and equipment hours, as well as lost profits.

### 7.0 Warranty

- 7.1 If we undertake to develop software or to supply a software package in accordance with explicit and written functional specifications agreed between the client and us, we warrant that the software developed or the software package supplied by us is able to perform the agreed tasks or that it meets the functional specifications, unless stipulated otherwise in the agreement.
- 7.2 In cases other than those referred to in paragraph 1, we undertake to perform the assignment given to us with due care and diligence. Verbal or written advice does not mean that we guarantee a certain result.
- 7.3 In those instances in which we have issued a warranty as referred to in paragraph 1, we undertake to track and repair faults in the product supplied by us, free of charge - unless explicitly agreed otherwise in writing -, provided that, in the event of data processed and delivered to the client, such faults have been brought to our attention in writing within two weeks of delivery, and, in all other cases, within three months of delivery.
- 7.4 Our warranty lapses at the moment that modifications are made to the product we supplied, which modifications were made by a party other than us or without our written approval. Faults which are the result of errors made by the client or third parties do not fall within the scope of our warranty. We may charge the repair costs in accordance with our usual rates in the event of user errors or inexpert use on the part of the client or in the event of other causes that cannot be attributed to us.

### 8.0 Price and payment

- 8.1 All prices are in Euros and exclusive of turnover tax (VAT) and other levies imposed or to be imposed by the government.
- 8.2 Social contributions and wage taxes of experts engaged by us will be at our expense. We indemnify the client against government claims in that respect.
- 8.3 All invoices must be paid by the client in accordance with the agreed payment conditions or other payment conditions stated on the invoice. In the event of absence of specific conditions, the payment term is thirty days after the invoice date.
- 8.4 Payment must be made without deduction, suspension or set-off, for whatever reason.
- 8.5 If payment is not made within the agreed payment term or the term stated on the invoice, the client owes interest of 1.5% on the outstanding amount, per month. If the client continues to fail to pay after having been given a notice of default, the client owes extrajudicial collection costs of 15% of the outstanding amount. In addition, the actual costs involved in legal proceedings will be at the expense of the client.
- 8.6 If the client's creditworthiness gives reason to do so, we may demand further security. If such security is not provided, we may suspend the execution of the agreement.
- 8.7 Our administrative records will serve as full evidence in relation to the performances delivered by us and the amounts owed by the client in that respect, without prejudice to the client's right to produce evidence to the contrary.
- 8.8 In the event of a periodic payment obligation on the part of the client, we are entitled to adjust the applicable prices and rates to the term referred to in the agreement, in writing, subject to the index or other criterion in that agreement. If the agreement does not explicitly provide for the possibility to adjust the prices or rates, we will always be entitled to adjust the applicable prices and rates, in writing, with due observance of a notice period of one month. If, in the latter case, the client does not agree to the adjustment, it will be entitled to terminate the agreement within 14 days of receipt of the announcement, in writing, with effect from the date on which the new prices and/or rates would have come into effect.

### 9.0 Ownership

- 9.1 Ownership of the equipment, information carriers and materials made available to the client in connection with the execution of the agreement remains vested in us, unless explicitly agreed otherwise in writing.
- 9.2 Ownership of all goods - whenever supplied by us to the client - remains vested in us until all amounts owed in that respect, including services and/or work performed in relation to this, as well as any claims on account of the client's attributable failure in the performance of the agreement, have been paid.
- 9.3 We reserve all intellectual property rights with regard to materials supplied and offers made by us and the inventions and copyright-protected works contained therein, unless explicitly agreed otherwise in writing.
- 9.4 If we undertake to develop (customised) software or issue advice with regard to the possibility to develop such software then, contrary to the provisions of paragraph 3, all intellectual property rights with regard to the software developed by us for the client and with regard to the corresponding documentation, transfer to the client, subject to the condition that all amounts owed in that respect, including services and/or work performed in relation to this, as well as any claims on account of the client's attributable failure in the performance of the agreement, have been paid. Nonetheless, rights to inventions and know-how, including those obtained whilst performing the work or providing the services for the client, always remain owned by us.

- 9.5 Contrary to the provisions of paragraph 1 - yet without prejudice to the provisions of paragraph 2 - information carriers and materials made available to the client together with the software developed for the client, become owned by the client.
- 9.6 We are permitted to take technical measures to protect our intellectual property rights to software.

#### 10.0 Right of use of the software

- 10.1 Unless explicitly stated otherwise in writing, we only grant the client the non-exclusive, non-transferable and non-sublicensable right to use the software.
- 10.2 Unless otherwise agreed in writing, the client is permitted to make a maximum of two copies of the software for security purposes. These copies will only be used by the client to replace any original material that has become unusable and will bear the same labels and indications as the original material.
- 10.3 The client is not permitted to sell, hire out, dispose of, encumber or pledge the software or otherwise provide the software as security to third parties. Nor will the client modify the software or use the software for third parties. The right of use of the software does not include the source code of the software. The source code will not be made available to the client, unless explicitly agreed otherwise in writing.
- 10.4 In order to protect our rights, the client will ensure that the software is kept secret and not disclosed to third parties. The client is aware that the software contains confidential information and trade secrets in relation to our business.

#### 11.0 Continuing performance agreements

- 11.1 If we enter into an agreement with the client that does not provide for a one-off amount of work, services or for a one-off supply, and that instead provides for a periodic or otherwise regular performance of work and/or provision of services and/or supplies, such agreement will, in the absence of an explicitly agreed period, apply for a term of one year.
- 11.2 A sub-agreement will be entered into for every assignment given within the framework of the previous paragraph.
- 11.3 This sub-agreement will in any case include:
- a description of the work
  - the location where the work will be performed
  - the necessary professional disciplines
  - Mediaan/ABS staff to be deployed
  - the planning
  - the rates that will be charged
  - the mutual contact persons
  - the term
- 11.4 An agreement as referred to in paragraph 1 will be tacitly renewed for periods equal to the original term, unless either party terminates the agreement by registered letter, with due observance of a notice period of three months prior to the end of the agreed or renewed period.

#### 12.0 Execution of the work and/or services

- 12.1 Based on the description of the assignment, we will have a qualified expert perform the work.
- 12.2 Up to three weeks after the commencement date of the assignment, the client will be entitled to submit a written demand for the expert to be replaced, if the client believes, and substantiates, that its expertise is not in accordance with the description of the assignment laid down in the sub-agreement.
- 12.3 In that event, we will arrange for the immediate replacement of the expert. The training time for this replacement will be at the expense of the client, up to the maximum period that the original expert has worked for.
- 12.4 If we are unable to arrange for a replacement, the sub-agreement will be terminated with immediate effect. In that event, the parties do not owe each other any compensation.
- 12.5 If the client has demanded replacement without valid ground to do so, we will be entitled to charge the costs and/or damage caused by that replacement.
- 12.6 The time period within or the moment at which we will need to have performed the agreed work, or have provided the agreed services or supplies, has been set assuming that the conditions under which the delivery is to be made will not change after having accepted the assignment.
- 12.7 In the event of such change in conditions occurring - regardless of the predictability thereof - resulting in a delay, the agreed time of delivery will be shifted accordingly.
- 12.8 If it has been agreed that the work, services and/or supplies will take place in phases, we may postpone commencement of the work, services and/or supplies, until the client has approved and accepted completion of the preceding phase in accordance with the provisions of article 4.
- 12.9 The dispatch, transport and/or transfer of goods, including materials, information carriers and equipment, will always be at the expense and risk of the client. We will only be obliged to take out insurance in that respect, if and to the extent that we have explicitly agreed to this in writing.
- 12.10 The risk of loss, theft, embezzlement or damage to items, data, documents, software or data files, created, supplied or used within the framework of the agreement, transfers to the client at the moment that the client, or an auxiliary person of the client, has taken actual possession thereof.

#### 13.0 Secondment services

- 13.1 We will make the employee(s) / expert(s) stated in the agreement available to the client in order to perform work under the management and supervision of the client. The results of the work are at the risk of the client. The employee will be made available to the client for forty hours per week, during our usual working days.
- 13.2 The client can only deploy the employee / expert for work other than as agreed with our prior, written approval.
- 13.3 The client is only permitted to re-second the employee made available to third parties for work to be performed under the supervision of that third party with our explicit and written approval.
- 13.4 We will make an effort to ensure that the employee who has been made available continues to be available for work on the agreed days throughout the term of the agreement, unless the employee falls ill or leaves our employment. Also if the agreement has been entered into with a view to execution by a certain person, we will always be

permitted to replace this person by one or more persons with the same qualifications, subject to consultation with the client.

- 13.5 The provisions of article 12, paragraphs 2, 3, 4, 5, 6 and 7, also apply with regard to secondment services.

#### 14.0 Takeover of personnel

- 14.1 During the term of the agreement, as well as for one year after termination thereof, each of the parties will only employ staff of the other party who have been involved in the execution of the agreement, or otherwise arrange for them to work for the other party, directly or indirectly, subject to the prior, written approval of that party. Conditions may be attached to this approval, including the condition that the client pays us reasonable compensation.
- 14.2 In the event the client violates the provisions under 14.1 and/or fails to comply with these provisions, he incurs an immediately due and payable penalty of EUR 50,000 to us, per offence. The penalty will be payable by the mere fact of the offence, yet does not affect the contractor's right to claim full compensation.

#### 15.0 Early termination

- 15.1 Each of the parties is entitled to terminate the (sub-)agreement in writing with immediate effect, prior to full execution of that agreement or prior to expiry of the agreed term of the agreement, if the other party attributably fails in the fulfilment of its obligations.
- 15.2 This termination is effected by either party giving the other a written notice of default to remedy the situation within a pre-set, reasonable period of time or to otherwise undo the consequences of its acts or omissions contrary to the agreement. Any compensation on our part will be subject to the provisions of articles 17 to 20 and the provisions of the agreement.
- 15.3 The agreement can also be terminated early if either party applies for a moratorium, files for bankruptcy or is declared insolvent, if the company is wound up or discontinued or if the direct control of the client's company directly or indirectly changes. We will never be obliged to refund any monies or pay compensation on account of termination as referred to in this paragraph.
- 15.4 Despite the early termination, the payment obligations with regard to work and/or services and goods supplied until then must still be met.
- 15.5 Paragraph 1 and 2 do not apply if an acceptance test has been agreed. In that case the provisions of article 4 apply.

#### 16.0 End of the agreement

- 16.1 At the end of the agreement we will, at the written request of the client, provide the client with the information as can be reasonably demanded by the client and which information serves to enable others to maintain the software in connection with the continuity. The same applies if the agreement was to be terminated early, on the understanding that, in that case, the other party will be able to execute the remaining part of the terminated agreement. However, proprietary software of the contractor's will not be issued.
- 16.2 The client will be charged for the provision of this information in accordance with our applicable rates.
- 16.3 The client will return any copies of the software held in its possession to us immediately after termination of the agreement.

#### 17.0 Liability and compensation

- 17.1 We only accept liability for damage in the event of intent or gross negligence and, as a result, we attributably fail in the fulfilment of our obligations under the agreement, whilst having been given a notice of default by registered letter and, insofar as fulfilment of our obligations is still possible, a reasonable term to fulfil our obligations, but have failed to do so due to circumstances attributable to us.
- 17.2 We only compensate damage insofar as we are liable for this in accordance with the provisions above, subject to the maximum amount of the invoices paid by the client, exclusive of turnover tax, yet we will never pay an amount exceeding the amount that our liability insurance would pay out in such an event. Compensation of damage will further be subject to the remaining provisions set out in these terms and conditions and the agreement.
- 17.3 A condition for any right to compensation of damage arising is that the client always notifies us of the aforesaid damage as soon as possible. Every claim for damages against us lapses by the mere expiry of 24 months after the claim arising.
- 17.4 We indemnify the client against third-party claims in respect of damage suffered by those third parties due to intent or gross negligence on the part of staff and/or other persons deployed by us and for whom we are responsible, insofar as that damage has been caused whilst performing work or providing services.

#### 18.0 Scope of the compensation for damage

- 18.1 We do not compensate:
- damage arising from the mere delay in the execution of the agreement, except insofar as the damage consists of any additional costs incurred as another party needs to complete the unfinished agreement in the event of article 15, paragraphs 1 and 2.
  - direct trading loss and personal injury, regardless of the nature.
  - damage caused by acts or omissions of the client itself or by persons employed by the client or for whom the client is otherwise responsible.
  - damage to equipment of the client or damage caused with it, insofar as this concerns equipment used by our staff in the execution of the agreement.
  - damage which is the result of the client providing incorrect or incorrect or faulty data or materials.
  - damage caused by faults that have manifested themselves after expiry of the warranty period.
- 18.1 We are not liable for the correctness of information and/or advice provided by us prior to the formation of the agreement.
- 18.2 The client remains responsible and liable for the administration and calculation methods applied, as well as for the payment of wage taxes and social contributions payable to the government and other institutions, and indemnifies us in that respect.
- 18.3 The client indemnifies us and our staff against third-party claims for damage caused by the use of the product supplied or delivered by us.
- 18.4 In the event of continuing performance agreements, the compensation of damage will also be subject to the maximum amount of the invoices paid by the client, exclusive of turnover tax, yet never more than our liability insurance would pay out in such an event.

## **19.0 Force majeure**

- 19.1 We are not liable if and insofar as we are unable to fulfil our obligations due to force majeure.
- 19.2 Force majeure in any case includes - but is not limited to - every foreign cause, as well as every circumstance, which, pursuant to the law and/or the agreement and/or these terms and conditions, are not at our risk or expense. Delays with or attributable failure in the fulfilment of obligations by our suppliers, illness of personnel who, on account of their specific expertise or training, cannot be replaced, faultiness of items, equipment, software or materials of third parties we are required to use by the client, government measures, breakdowns in the power supply, breakdown in the Internet, data networks or telecommunication facilities and war are explicitly deemed to be force majeure.

## **20.0 Consequences of force majeure**

- 20.1 If and insofar as force majeure prevents us from fulfilling our obligations, the client will be released from its obligation to pay the corresponding parts. Any possible benefits enjoyed by us will not be settled.
- 20.2 If the force majeure has lasted for a period of three months, or if it has been established that the force majeure will last for more than three months, either party can terminate the agreement early by registered letter.
- 20.3 The provisions of article 15.4 apply by analogy.

## **21.0 Secrecy**

- 21.1 We will take measures and comply with reasonable instructions from the client in order to secure the secrecy of all data and information made available to us by or on behalf of the client.
- 21.2 We will refrain from disclosing such data to third parties, unless we have obtained the client's written approval.
- 21.3 The party to whom we make an offer undertakes towards us to observe secrecy with regard to this.
- 21.4 If so required for the execution of the agreement, the client, if so requested, will notify us in writing of the method in which the client fulfils its statutory obligations in the field of protecting personal data.
- 21.5 The client indemnifies us against claims brought by third parties whose personal data is registered or processed within the framework of a personal data register held by the client or for which the client is otherwise responsible by law, unless the client demonstrates that the facts that underlay the claim are attributable to us.
- 21.6 The client is fully responsible for data that are processed by the client by making use of our service. The client warrants to us that the contents, the use and/or the processing of the data are not unlawful and do not infringe any third-party right. The client indemnifies us against any third-party legal action, for any reason whatsoever, in relation to these data or the execution of the agreement.

## **22.0 Copyright warranty**

- 22.1 We will indemnify the client against any third-party action based on the allegation that the software developed by us infringes any intellectual property right applicable in the Netherlands.
- 22.2 We will pay the costs and damage determined in a final court decision, provided that the client immediately notifies us of the action referred to in paragraph 1 and leaves us in charge of the handling of the case while rendering us every assistance, with due observance of the provisions of articles 17 and 18.
- 22.3 If a claim has been brought before a court of justice, or if there is a possibility to do so, we can replace or modify the software to the extent deemed appropriate by us to limit the damage.

## **23.0 Disputes**

- 23.1 The agreement is governed by Dutch law.  
In the event of conflicts in agreements, the provisions of the sub-agreements between the parties apply first, followed by those in the master agreement and, finally, by the provisions of these general terms and conditions.
- 23.2 The invalidity of one or more provisions of these terms and conditions does not affect the validity of the remaining provisions of these terms and conditions. The invalid term(s) and condition(s) will be replaced by (a) provision(s) that reflect(s) the parties' intentions as closely as possible.
- 23.3 A dispute is deemed to be present if so stated in writing by either of the parties.
- 23.4 Disputes arising within the framework of the agreement will be heard by the court with jurisdiction in the District of Limburg.
- 23.5 If the parties believe that a dispute must be settled by means of arbitration or binding advice, a written agreement to that end will be signed within 14 days of the dispute having been reported in accordance with paragraph 2. The agreement appoints an arbitrator/binding advisor, or the parties appoint one arbitrator/binding advisor each, after which such arbitrators/binding advisors appoint a third arbitrator/binding advisor, who will then settle the dispute.