



## **GENERAL TERMS AND CONDITIONS INFORMATION TECHNOLOGY\***

Filed at the Office of the Clerk of the  
District Court in The Hague, The  
Netherlands, on the third of June 2003  
under number 60/2003.

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## GENERAL PROVISIONS

### 1. Offer and Agreement

1.1 These General Terms and Conditions shall apply to all offers, legal relationships and Agreements under which the Supplier provides goods and/or services of whatever nature to the Customer. Deviations from and additions to these General Terms and Conditions shall only be valid if they have been expressly agreed in writing.

1.2 All offers and other statements by the Supplier shall be without obligation, unless the Supplier expressly indicates otherwise in writing. The Customer warrants the accuracy and completeness of the measurements, requirements, performance specifications and other data on which the Supplier bases its offer and which have been stated by or on behalf of the Customer to the Supplier.

1.3 The application of the Customer's purchasing or other terms and conditions is expressly rejected.

1.4 If any provision of these General Terms and Conditions is null and void or annulled, the other provisions of these General Terms and Conditions shall remain in full force.

1.5 The Supplier may always state additional requirements concerning communication between the Parties or performance of legal acts by e-mail.

### 2. Price and payment

2.1 All prices shall be exclusive of turnover tax (VAT) and other levies imposed by the government.

2.2 If the Customer must make regular payments, the Supplier shall be entitled to adjust the applicable prices and rates by providing written notice at least three months in advance. If the Customer does not wish to agree to such an adjustment, the Customer shall, within thirty days after the notice, be entitled to terminate the Agreement before the date on which the adjustment would have become effective.

2.3 The Parties shall record in the Agreement the date or dates on which the Supplier shall charge the Customer the fee for the agreed performance. The Customer shall pay invoices in accordance with the payment conditions stated on the invoice. In the absence of a specific provision, the Customer shall pay within thirty days after the invoice date. The Customer shall not be entitled to set off or to suspend a payment.

2.4 If the Customer does not pay the amounts owed in a timely manner, the Customer shall owe legal interest on the outstanding amount, without any written demand or notice of default being necessary. If the Customer still does not pay the claim after a written demand or notice of default, the Supplier can pass on the claim for collection, in which case the Customer shall, in addition to the total amount owed then, be obliged to pay for all in-court and out-of-court expenses, including expenses charged by external experts in addition to the costs determined at law. The Customer shall also owe the expenses incurred by the Supplier in regard to unsuccessful mediation if the Customer is ordered by a judgment to pay the outstanding amount in full or in part.

### 3. Confidential information, taking over employees and privacy

3.1 Each of the Parties warrants that all of the information received by the Other Party which is known to be or should be known to be confidential in nature shall remain secret, unless a legal obligation mandates disclosure of that information. The Party receiving the confidential information shall only use it for the purpose for which it has been provided. Information shall in any event be considered confidential if it is designated by either of the Parties as such.

3.2 During the term of the Agreement and for one year after it is terminated, each of the Parties shall not, unless it receives prior written permission from the other Party, take on employees of the Other Party who are or were involved in executing the Agreement or otherwise have these employees work for it, directly or indirectly. As the occasion arises, the Supplier shall not withhold the permission concerned if the Customer has offered appropriate compensation.

3.3 The Customer shall indemnify the Supplier against claims by persons whose personal data has been recorded or processed in connection with a register of persons maintained by the Customer or for which the Customer is responsible under law or otherwise, unless the Customer proves that the facts underlying the claim are solely imputable to the Supplier.

### 4. Retention of title and rights, specification and possessory lien

4.1 All objects delivered to the Customer shall remain the Supplier's property until all amounts owed by the Customer for the objects delivered or to be delivered or work performed or to be performed under the Agreement, as well as all other amounts which the Customer owes due to a breach of its payment obligation, have been paid fully to the Supplier. A Customer acting as a reseller may sell and re-deliver all items subject to the Supplier's retention of title insofar as that is common in connection with its normal business operations. If the Customer creates a new object wholly or partly from the objects delivered by the Supplier, the Customer shall create that object solely

for the Supplier and the Customer shall hold the newly created object for the Supplier until the Customer has paid all amounts owed under the Agreement; in that event, the Supplier shall possess all rights as the owner of the newly created object until the time the Customer makes full payment.

4.2 As the occasion arises, rights shall always be granted or transferred to the Customer on the condition that the Customer pay the agreed fees fully and in a timely manner.

4.3 Notwithstanding any delivery obligation, the Supplier may maintain possession of the objects, products, proprietary rights, information, documents, databases and interim or other results of the Supplier's services which have been received or generated in connection with the Agreement until the Customer has paid all amounts owed to the Supplier.

### 5. Risk

5.1 The risk of loss or theft of or damage to objects, products, software or data which are the subject of the Agreement shall pass to the Customer at the time they have been placed at the actual disposal of the Customer or an assistant used by the Customer.

### 6. Intellectual or industrial property rights

6.1 All intellectual and industrial property rights to software, websites, databases, equipment or other materials developed or provided under the Agreement, such as analyses, designs, documentation, reports, offers, as well as preparatory materials in that regard, shall be held solely by the Supplier, its licensors or its suppliers. The Customer shall only acquire the rights of use expressly granted in these Terms and Conditions and by law. Any other or more extensive right of the Customer to reproduce software, websites, databases or other materials shall be excluded. A right of use to which the Customer is entitled shall be non-exclusive and non-transferable to third parties.

6.2 If, in deviation from Article 6.1, the Supplier is prepared to undertake to transfer an intellectual or industrial property right, such an obligation may only be entered into expressly in writing. If the Parties expressly agree in writing that intellectual or industrial property rights regarding software, websites, databases, equipment or other materials specifically developed for the Customer shall be transferred to the Customer, this shall not affect the Supplier's right to apply and to use, either for itself or for third parties, the parts, general principles, ideas, designs, documentation, works, programming languages and the like underlying that development, without any limitation on other purposes. Nor shall a transfer of intellectual or industrial property rights affect the Supplier's right to undertake developments for itself or third parties which are similar to those done for the Customer.

6.3 The Customer shall not be allowed to remove or modify any designation concerning the confidential nature or concerning copyrights, trademarks, business names or other intellectual or industrial property rights from the software, websites, databases, equipment or materials.

6.4 The Supplier shall be allowed to take technical measures to protect the software or with a view to agreed restrictions in the duration of the right to use the software. The Customer shall not be allowed to remove or evade such a technical measure. If security measures result in the Customer being unable to make a back-up copy of software, the Supplier shall provide the Customer with a back-up copy upon request.

6.5 Unless the Supplier provides a back-up copy of the software to the Customer, the Customer may make one back-up copy of the software, which may only be used to protect against involuntary loss of possession or damage. The back-up copy may only be installed after involuntary loss of possession or damage. A back-up copy must have the same labels and copyright designations as are present on the original version (see Article 6.3).

6.6 Subject to the other provisions of these General Terms and Conditions, the Customer shall be entitled to correct errors in software provided to it if that is necessary for the intended use of the software. In these General Terms and Conditions, "errors" shall mean a substantial failure to meet the functional or technical specifications stated in writing by the Supplier and, in the case of custom-made software and websites, the functional or technical specifications expressly agreed between the Parties in writing. An error shall only exist if the Customer can prove it and if it can be reproduced. The Customer shall be obliged to notify the Supplier of errors immediately.

6.7 The Supplier shall indemnify the Customer against any third-party cause of action based on the claim that software, websites, databases, equipment or other materials developed by the Supplier itself infringe an intellectual or industrial property right applicable in The Netherlands, on the condition that the Customer immediately inform the Supplier in writing about the existence and substance of the cause of action and let the Supplier handle the matter completely, including with respect to agreeing to any settlements. To that end, the Customer shall provide the necessary powers of attorney, information and cooperation to the Supplier to defend - if necessary, in the Customer's

name - against these causes of action. This indemnification obligation shall be extinguished if the alleged infringement relates (i) to materials provided by the Customer to the Supplier for use, adaptation, processing or incorporation, or (ii) to changes the Customer has made or caused third parties to make to the software, website, databases, equipment or other materials. If it has been established in court as an incontrovertible fact that the software, websites, databases, equipment or other materials developed by the Supplier itself infringe any intellectual or industrial property right held by a third party or if, in the Supplier's judgment, it is likely that such infringement will occur, the Supplier shall, if possible, ensure that the Customer can continue to have undisturbed use of the delivered objects, or functionally equivalent other software, websites, equipment or the other materials concerned, for example, by modifying the infringing parts or by acquiring a right of use for the Customer. If, in its exclusive judgment, the Supplier cannot ensure or cannot ensure except in a manner that is unreasonably burdensome (financially or otherwise) for it that the Customer can continue to have undisturbed use of the delivered objects, the Supplier shall take back the delivered objects, with crediting of the acquisition costs minus a reasonable user's fee. The Supplier shall not make its choice in this regard until after the Customer has been consulted. Any other or more extensive liability or indemnification obligation on the Supplier's part due to the infringement of a third party's intellectual or industrial property rights shall be completely excluded, including liability and indemnification obligations on the Supplier's part for infringements caused by using the software, websites, databases, equipment and/or materials delivered (i) in any form not modified by the Supplier, (ii) in connection with objects or software not delivered or furnished by the Supplier or (iii) in another manner besides that for which the equipment, software, websites, databases and/or other materials were developed or intended.

6.8 The Customer warrants that there are no third-party rights which are inconsistent with providing the Supplier with equipment, software, materials intended for websites (visual material, text, music, domain names, logos etc.), databases, or other materials, including draft material, intended for use, adaptation, installation or incorporation (for example, in a website). The Customer shall indemnify the Supplier against any action based on the claim that such provision, use, adaptation, installation or incorporation infringes a third-party right.

## **7. Cooperation by the Customer; telecommunications**

7.1 The Customer shall always furnish the Supplier in a timely manner with all data or information which is useful and necessary to execute the Agreement properly and provide full cooperation, including furnishing access to its buildings. If the Customer utilises its own employees in cooperating in the execution of the Agreement, these employees shall possess the necessary know how, experience, abilities and characteristics.

7.2 The Customer shall bear the risk of selecting, using and applying in its organisation the equipment, software, websites, databases and other products and materials and the services to be provided by the Supplier, and shall also be responsible for the monitoring and security procedures and proper system management.

7.3 If the Customer furnishes software, websites, materials, databases or data to the Supplier on a data carrier, this carrier shall meet the specifications prescribed by the Supplier.

7.4 If the Customer does not provide the Supplier with the data, equipment, software or employees necessary to execute the Agreement, or does not provide this in a timely manner or in accordance with the agreements made, or if the Customer otherwise does not fulfil its obligations, the Supplier shall be entitled to suspend execution of the Agreement in whole or in part, and it shall be entitled to charge the ensuing expenses in accordance with its usual rates, all of this without prejudice to the Supplier's right to exercise any other legal right.

7.5 In the event that employees of the Supplier perform work on-site at the Customer's, the Customer shall provide the facilities reasonably desired by those employees free of charge, such as a working space with computer and telecommunications facilities. The working space and facilities shall comply with all applicable statutory and other requirements and provisions concerning working conditions. The Customer shall indemnify the Supplier against claims by third parties, including the Supplier's employees, who, in executing the Agreement, suffer injury which is the result of acts or omissions by the Customer or of unsafe situations in its organisation. The Customer shall provide timely notice to the Supplier's employees to be utilised of the company and security rules applicable within its organisation.

7.6 If, in executing the Agreement, telecommunications facilities, including the Internet, are used, the Customer shall be responsible for properly selecting these and making them available in a timely and sufficient manner, except for those facilities directly used and managed by the Supplier. The Supplier shall never be liable for damage or expenses due to transmission errors, malfunctions or the non-

availability of these facilities, unless the Customer proves that this damage or these expenses resulted from intentional acts or omissions or gross negligence on the part of the Supplier or its managers. If telecommunications facilities are used in executing the Agreement, the Supplier shall be entitled to assign access or identification codes to the Customer. The Supplier may change the assigned access or identification codes. The Customer shall treat the access codes as confidential and with due care and shall only disclose them to authorised employees. The Supplier shall never be liable for damage or expenses resulting from misuse of access or identification codes.

## **8. Delivery periods**

8.1 All delivery and other periods stated or agreed by the Supplier have, to the best of its knowledge, been determined based on data known to the Supplier when it entered into the Agreement. The Supplier shall properly exert its best efforts to observe agreed delivery and other periods as much as possible. The mere fact that a stated or agreed delivery or other period has been exceeded shall not cause the Supplier to be in default. In all cases, hence, even if the Parties have expressly agreed on a firm date in writing, the Supplier shall not be in default because of a time period being exceeded until the Customer has provided it with a written notice of default. The Supplier shall not be bound by firm or non-firm delivery or other periods which can no longer be met on account of circumstances beyond its control which have occurred after the Agreement was concluded. Nor shall the Supplier be bound by firm or non-firm delivery periods if the Parties have agreed to modify the substance or scope of the Agreement (additional work, change in specifications etc.). If any period threatens to be exceeded, the Supplier and Customer shall consult with each other as soon as possible.

## **9. Termination of the Agreement**

9.1 Each of the Parties shall only be entitled to rescind the Agreement if the Other Party imputably fails to perform material obligations under the Agreement - in all cases, after having received a proper written notice of default which is as detailed as possible and in which it has been given a reasonable time period to remedy the breach.

9.2 If an agreement which, by its nature and substance, will not end when certain conditions, acts or the like are fulfilled, has been entered into for an indefinite period of time, each of the Parties may terminate the Agreement by written notice after proper consultation and with a statement of reasons. If the Parties have not agreed on an express notice period, a reasonable notice period must be observed in terminating the Agreement. The Parties shall never be liable for damages for terminating the Agreement.

9.3 In deviation from what has been provided for by statute in this regard through directory law, the Customer may only terminate a services agreement in the cases stated in these Terms and Conditions.

9.4 Each of the Parties may partly or completely terminate the Agreement in writing with immediate effect and without a notice of default if the Other Party is granted a provisional or non-provisional suspension of payments, if a petition for liquidation is filed with regard to the Other Party or if the Other Party's business is wound up or terminated for other reasons besides a business reconstruction or merger. The Supplier shall never be obliged on account of this termination to refund funds already received or to pay damages. In the event of the Customer's liquidation, the right to use software provided to the Customer shall be extinguished by law.

9.5 If, at the time of the rescission referred to in Article 9.1, the Customer has already received performance in connection with execution of the Agreement, this performance and the related payment obligation shall not be cancelled, unless the Customer proves that the Supplier is in default with regard to that performance. Amounts which the Supplier has invoiced before the rescission in connection with what it has already properly performed or delivered to execute the Agreement shall, subject to the provisions in the preceding sentence, continue to be owed in full and shall be immediately payable at the time of rescission.

## **10. The Supplier's liability; indemnity**

10.1 The Supplier's total liability for imputably failing to perform the Agreement shall be limited to compensating direct damage, up to at most the amount of the price (exclusive of VAT) stipulated for that Agreement. If the Agreement is primarily a continuing performance agreement with a term exceeding one year, the price stipulated for the Agreement shall be set at the total of the fees (exclusive of VAT) stipulated for one year. The total compensation for direct damage shall not, however, in any case exceed EUR 500,000 (five hundred thousand euros). "Direct damage" shall solely mean:

- a. reasonable expenses which the Customer would have to incur to make the Supplier's performance conform to the Agreement; this alternative damage shall not be compensated, however, if the Agreement is rescinded by or at the suit of the Customer;
- b. reasonable expenses which the Customer has incurred out of

necessity to keep its old system or systems and related facilities operating longer because the Supplier did not provide delivery on a firm delivery date which was binding for it, minus any savings resulting from the delay in delivery;

c. reasonable expenses incurred to determine the cause and scope of the damage, insofar as the determination relates to direct damage within the meaning of these Terms and Conditions;

d. reasonable expenses incurred to prevent or mitigate damage, insofar as the Customer demonstrates that these expenses resulted in mitigation of direct damage within the meaning of these Terms and Conditions.

10.2 The Supplier's liability for injury or damage through death or bodily injury or because of material damage to objects shall never exceed EUR 1,250,000 (one million two hundred and fifty thousand euros).

10.3 The Supplier's liability for consequential damage, consequential loss, lost profits, lost savings, loss of goodwill, damage through business interruptions, damage ensuing from claims by the Customer's customers, mutilation or loss of data, damage relating to the use of objects, materials or software of third parties prescribed by the Customer for the Supplier, damage relating to engagement of suppliers prescribed by the Customer for the Supplier and all other forms of damage or injury besides those mentioned in Article 10.1 and 10.2, on any account whatsoever, shall be excluded.

10.4 The limitations mentioned in the preceding paragraphs of this Article 10 shall not apply if and insofar as the damage or injury is the result of intentional acts or omissions or gross negligence by the Supplier or its managers.

10.5 The Supplier's liability because of an imputable failure to perform an Agreement shall in all cases only arise if the Customer immediately and properly provides a written notice of default to the Supplier, with a reasonable time period for remedying the failure being given and the Supplier still imputably failing to perform its obligations after that period as well. The notice of default must contain a description of the breach which is as complete and specific as possible, so that the Supplier can respond adequately.

10.6 For any right to damages to exist, the Customer must always report the damage or injury to the Supplier in writing as soon as possible after it occurs. Any claim to damages against the Supplier shall be extinguished by the mere lapse of 24 months after the claim arises.

10.7 The Customer shall indemnify the Supplier against all third-party claims because of product liability ensuing from a defect in a product or system which has been delivered by the Customer to a third party and which partly consisted of equipment, software or other materials delivered by the Supplier, except if and insofar as the Customer proves that the damage or injury was caused by that equipment, software or other materials.

10.8 The provisions in this Article shall also apply for the benefit of all legal and natural persons utilised by the Supplier in executing the Agreement.

## **11. Force Majeure**

11.1 A Party shall not be obliged to perform any obligation if it is prevented from doing so by a situation of force majeure. "Force majeure" shall also include a situation of force majeure for the Supplier's suppliers, improper performance of obligations by suppliers prescribed by the Customer for the Supplier, as well as defects in objects, materials or software of third parties which the Customer has required the Supplier to use.

11.2 If a situation of force majeure lasts for more than 90 days, the Parties shall be entitled to terminate the Agreement by rescinding it in writing. What has already been performed pursuant to the Agreement shall in that case be settled proportionately, without the Parties otherwise owing each other anything.

## **12. Applicable law and disputes**

12.1 Dutch law shall govern the Agreements between the Supplier and the Customer. The Vienna Sales Convention of 1980 shall not apply.

12.2 Disputes arising between the Supplier and the Customer in connection with an Agreement concluded between the Supplier and the Customer or in connection with further agreements which arise under this shall be settled through arbitration in accordance with the Arbitration Regulations of the Foundation for the Settlement of Automation Disputes in The Hague, all of this without prejudice to the Parties' right to request relief in interlocutory arbitration proceedings and without prejudice to the Parties' right to take protective pre-judgment measures.

12.3 In order to attempt to achieve an amicable resolution of an existing or potential future dispute, either Party may always initiate IT mediation pursuant to the IT Mediation Regulations of the Foundation for the Settlement of Automation Disputes in The Hague. IT mediation pursuant to these Regulations shall be based on mediation by one or more mediators. This procedure shall not result in a judgment which is binding on the Parties. Participation in this procedure shall be

voluntary. The provisions in this paragraph of this Article shall not preclude a Party which so desires from skipping the IT mediation procedure and immediately pursuing the dispute procedure mentioned in Article 12.2.

## **COMPUTER SERVICES**

In addition to the General Provisions in these General Terms and Conditions, the provisions set forth in this Chapter "Computer Services" shall apply if the Supplier provides services in the area of computer services, including automated processing of data using software and equipment managed by the Supplier.

### **13. Term**

13.1 If the Agreement relates to providing computer services periodically or regularly, the Agreement shall be entered into for the term agreed between the Parties, in the absence of which a one-year term shall apply. The term of the Agreement shall be tacitly extended each time by the length of the original period, unless the Customer or the Supplier terminates the Agreement in writing with due observance of a notice period of three months before the end of the period concerned.

### **14. Performance of the work**

14.1 The Supplier shall only provide the computer services at the Customer's instruction. If the Supplier provides computer services pursuant to an authorised order from a government body regarding information of the Customer or its employees, all related expenses shall be charged to the Customer. The Supplier shall provide the computer services with due care in accordance with the procedures and agreements recorded in writing with the Customer.

14.2 All data to be processed by the Supplier shall be prepared and delivered by the Customer in accordance with the conditions to be stated by the Supplier. The Customer shall bring the data to be processed to and pick up the results of the processing at the location where the Supplier performs the computer services. Transport and transmission, in whatever manner, shall occur at the Customer's expense and risk, even if they have been carried out or arranged by the Supplier.

14.3 The Customer warrants that all materials, data, software, procedures and instructions provided by it to the Supplier to perform the computer services shall always be correct and complete and that all data carriers furnished to the Supplier shall meet the Supplier's specifications.

14.4 All equipment, software and other objects used by the Supplier for the computer services shall remain the Supplier's property or the subject of the Supplier's intellectual and industrial property, even if the Customer pays a fee for the Supplier to develop or acquire them. The Supplier may maintain possession of the products and data received from the Customer and the results generated from the processing until the Customer has paid all amounts owed to the Supplier.

14.5 The Supplier may modify the substance or scope of the computer services. If such modifications result in a change in the procedures applicable at the Customer's, the Supplier shall inform the Customer as soon as possible and the Customer shall be responsible for the costs of this change. The Customer may terminate the Agreement in that case by providing written notice no later than the date on which the modification becomes effective, unless this modification relates to changes in relevant legislation or other rules provided by competent authorities or the Supplier assumes the costs of this modification.

14.6 The Supplier shall, to the best of its ability, do its utmost to ensure that the software used by it to perform the computer services is adapted in a timely manner to amendments in the Dutch laws and regulations observed by it in connection with its services. Upon request, the Supplier shall advise the Customer at its usual rates with regard to the effects of these adaptations for the Customer.

### **15. Security, privacy and retention periods**

15.1 The Supplier shall comply with the statutory obligations which it has as a processor concerning its processing personal data. The Supplier shall provide appropriate technical and organisational measures to protect personal and other data against loss or against any form of unlawful processing.

15.2 The Customer warrants that all statutory provisions concerning processing personal data, including provisions in or under the Personal Data Protection Act, have been strictly observed and that all prescribed registrations have been carried out and all required consents to process personal data have been obtained. The Customer shall provide the Supplier immediately in writing with all requested information in this respect.

15.3 The Customer shall indemnify the Supplier against all third-party claims which may be filed against the Supplier because of a violation of the Personal Data Protection Act and/or other laws concerning processing personal data which is not imputable to the Supplier.

15.4 The Customer shall indemnify the Supplier against all claims of



third parties, including government bodies, which may be filed against the Supplier because of a violation of the laws concerning the statutory retention periods.

## **16. Guarantee**

16.1 The Supplier shall not be responsible for checking the accuracy and completeness of the results of the computer services. The Customer shall check these results itself after receiving them. The Supplier does not warrant that the computer services shall be provided without errors or without interruptions. If defects in the results of the computer services are a direct consequence of products, software, data carriers, procedures or operating actions for which the Supplier is expressly responsible under the Agreement, the Supplier shall repeat the computer services in order to fix these imperfections to the best of its ability, provided the Customer notifies the Supplier of these imperfections in writing and in detail as soon as possible, but no later than within one week after receiving the results of the computer services. Repetition shall only be done free of charge if the defects in the computer services are imputable to the Supplier. If the defects cannot be imputed to the Supplier and/or are the result of errors or imperfections on the Customer's part, such as providing incorrect or incomplete information, the Supplier shall charge the costs of any repetition to the Customer according to its usual rates. If fixing the defects imputable to the Supplier is not technically or reasonably possible, the Supplier shall credit the amounts owed by the Customer for the computer services concerned, without further or otherwise being liable to the Customer. The Customer shall not have any other rights because of defects in the computer services besides those described in these guarantee provisions.

## **SERVICES**

In addition to the General Provisions in these General Terms and Conditions, the provisions set forth in this Chapter "Services" shall apply if the Supplier provides services, such as giving advice, feasibility studies, consultancy, study programmes, courses, training sessions, support, secondment, hosting, the design, development, implementation or management of software, websites or information systems and services regarding networks. These provisions shall not affect the provisions included in these General Terms and Conditions concerning specific services, such as computer services, development of software and maintenance.

## **17. Performance**

17.1 The Supplier shall, to the best of its ability, do its utmost to perform the services with due care and, where appropriate, in accordance with the agreements and procedures recorded in writing with the Customer. All of the Supplier's services shall be performed on the basis of a best efforts obligation, unless and insofar as the Supplier has expressly promised a result in the written Agreement and the result concerned has also been described with sufficient definiteness. Any agreements concerning a service level must always be expressly agreed in writing.

17.2 If it has been agreed that the services shall be provided in stages, the Supplier shall be entitled to postpone the start of the services which are part of a stage until the Customer has approved the results of the preceding stage in writing.

17.3 In performing the services, the Supplier shall only be obliged to follow timely and sensible instructions of the Customer if this has been expressly agreed in writing. The Supplier shall not be required to follow instructions which change or supplement the substance or scope of the agreed services; if such instructions are followed, however, the work in question shall be compensated pursuant to Article 18.

17.4 If a services agreement has been entered into with a view to performance by a particular person, the Supplier shall always be entitled to replace this person after consultation with the Customer with one or more other persons with the same qualifications.

17.5 In the absence of an expressly agreed invoicing schedule, all amounts relating to services provided by the Supplier shall be owed once every calendar month in arrear.

## **18. Modification and additional work**

18.1 If, at the request of or with prior consent from the Customer, the Supplier has performed work or rendered other performance which goes beyond the substance or scope of the agreed services, the Customer shall pay for that work or performance according to the Supplier's usual rates. Expanding or modifying a system analysis, a design or specifications shall also constitute additional work. The Supplier shall never be obliged to satisfy such a request, and it may require that a separate written agreement be concluded.

18.2 The Customer accepts that work or performance as referred to in Article 18.1 may affect the agreed or expected time of completion of the services and the mutual responsibilities of the Customer and Supplier. The fact that additional work (or the demand for it) arises during execution of the Agreement shall never be a ground for the

Customer to rescind or terminate the Agreement.

18.3 Insofar as a set price has been agreed for the services, the Supplier shall, upon request, inform the Customer in writing in advance about the financial consequences of the extra work or performance.

## **19. Study programmes, courses and training sessions**

19.1 Insofar as the services by the Supplier consist of providing a study programme, course or training session, the Supplier may always demand payment of the amount owed before it begins to provide these services. The Supplier's normal rules shall govern the consequences of cancellation of participation in the study programme, course or training session.

19.2 If the number of registrations justifies doing so in the Supplier's judgment, the Supplier shall be entitled to combine the study programme, course or training session with one or more other study programmes, courses or training sessions, or to have them take place at a later date or a later time.

## **20. Secondment**

20.1 There shall be secondment within the meaning of these Terms and Conditions if the Supplier makes an employee (hereinafter: "the Seconded Employee") available to the Customer in order to have this Employee perform work under the Customer's supervision, management and/or direction.

20.2 The Supplier shall exert its best efforts to ensure that the Seconded Employee remains available for the term of the Agreement, notwithstanding the provisions in Article 17.4 concerning replacement.

20.3 The Customer shall be entitled to request replacement of the Seconded Employee (i) if the Seconded Employee demonstrably does not meet expressly agreed quality requirements and the Customer provides written notice of this to the Supplier within three working days after the work commences, or (ii) if the Seconded Employee experiences a long-term illness or leaves the Supplier's employment. The Supplier shall immediately address the request, making it a priority. The Supplier does not warrant that replacement shall always be possible. If replacement is not or not immediately possible, the Customer's claims to further performance of the Agreement as well as all claims of the Customer on account of non-performance of the Agreement shall be extinguished. The Customer's payment obligations concerning the work performed shall continue to exist.

20.4 The Supplier shall be obliged to make timely and complete payment of the wage tax and social security contributions (including advance contributions) to be paid for the Seconded Employee in connection with the Agreement. The Supplier shall indemnify the Customer against all statutory claims by the Tax Authorities or social insurance agencies regarding taxes and social security contributions directly relating to the Supplier's making the Seconded Employee available ("liability for using external personnel"), provided the Customer allows the Supplier to handle the claims concerned completely, cooperates fully with it and furnishes it with all necessary information and, if the Supplier desires, powers of attorney to conduct legal proceedings.

20.5 The Supplier shall not accept any liability for the selection of the Employee or for the results of the work arising under the Customer's supervision, management and/or direction.

## **DEVELOPMENT OF SOFTWARE**

In addition to the General Provisions in these General Terms and Conditions and the specific provisions in the Chapter "Services", the provisions set forth in this Chapter "Development of Software" shall apply if the Supplier develops software at the Customer's instruction and possibly installs it. The Chapter "Software Use and Maintenance" shall also apply to this software, except insofar as this Chapter provides differently. The rights and obligations referred to in this Chapter shall pertain solely to computer software in a form which is readable for a data processing machine and recorded on material which is readable for such a machine, as well as to the related documentation. Where this Chapter mentions "software", this shall also refer to websites.

## **21. Development of software**

21.1 If specifications for or a design of the software to be developed were not already given to the Supplier when the Agreement was concluded, the Parties shall in consultation specify in writing which software shall be developed and in which manner this shall occur. The Supplier shall develop the software with due care based on data to be provided by the Customer, the correctness, completeness and consistency of which the Customer shall warrant. If the Parties have agreed to use a development method which is characterised by the design and/or development of software parts being subject to a further setting of priorities to be determined during execution of the Agreement, this setting of priorities shall always occur in consultation between the Parties.

21.2 The Supplier shall be entitled, but not required, to examine the

correctness, completeness or consistency of the data, specifications or designs given to it and, if any imperfections are discovered, to suspend the agreed work until the Customer has eliminated the imperfections concerned.

21.3 Subject to the provisions in Article 6, the Customer shall only acquire the right to use the software in its own company or organisation. The software's source code and the technical documentation created in developing the software may only be made available to the Customer if and insofar as expressly agreed in writing, in which case the Customer shall be entitled to make changes to this software. If the Supplier is obliged at law to make the source code and/or technical documentation to the Customer, the Supplier may demand a reasonable fee.

## **22. Delivery, installation and acceptance**

22.1 The Supplier shall deliver the software to be developed to the Customer and install it as much as possible in accordance with the specifications recorded in writing, with installation only occurring if installation by the Supplier has been agreed in writing. In the absence of express agreements in this regard, the Customer itself shall install, set up, design parameters for and tune the software and, if necessary, adjust the equipment and user environment used in this connection. Unless expressly otherwise agreed, the Supplier shall not be required to convert data.

22.2 If an acceptance test has been agreed, the test period shall be 14 days after delivery or, if installation by the Supplier has been agreed in writing, after the installation is completed. The Customer shall not be allowed to use the software for productive or operational purposes during the test period. The Supplier may always require, hence, even if this has not been expressly agreed, that the Customer conduct a proper test of sufficient scope and depth using sufficiently qualified employees as to interim or other results of the development work and that the test results be reported to the Supplier in writing and in a well-organised and comprehensible manner.

22.3 The software shall be considered accepted by the Parties:

a. if an acceptance test has not been agreed between the Parties: at the time of delivery or, if installation by the Supplier has been agreed in writing, when the installation is completed, or

b. if an acceptance test has been agreed between the Parties: on the first day after the test period, or

c. if the Supplier receives a test report as referred to in Article 22.5 before the end of the test period: at the time that the errors within the meaning of Article 6.6 mentioned in that test report have been fixed, notwithstanding the existence of imperfections which do not preclude acceptance under Article 22.6. In deviation from this, if the Customer makes any use of the software for productive or operational purposes before express acceptance, the software shall be considered fully accepted as from the start of that use.

22.4 If, when the agreed acceptance test is conducted, it turns out that the software contains errors which impede the progress of the acceptance test, the Customer shall proven written, detailed notice to the Supplier, in which case the test period shall be interrupted until the software has been adjusted in such a manner that this impediment is eliminated.

22.5 If, when the agreed acceptance test is conducted, it turns out that the software contains errors within the meaning of Article 6.6, the Customer shall inform the Supplier about the errors through a written and detailed test report no later than on the last day of the test period. The Supplier shall do its utmost to fix the aforementioned errors to the best of its ability within a reasonable time period, with the Supplier being entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the software.

22.6 Acceptance of the software may not be withheld on other grounds besides those relating to the expressly agreed specifications between the Parties nor because of the existence of minor errors, that is, errors which do not reasonably preclude putting the software to operational or productive use, notwithstanding the Supplier's obligation to fix these minor errors under the guarantee provisions of Article 25, if applicable. In addition, acceptance may not be withheld with regard to aspects of the software which can only be evaluated subjectively, such as the design of the user interfaces.

22.7 If the software is delivered and tested in stages and/or parts, the non-acceptance of a particular stage and/or part shall not affect any acceptance of an earlier stage and/or another part.

22.8 Acceptance of the software in one of the ways referred to in Article 22.3 shall have the effect that the Supplier is fully discharged for performing its obligations concerning developing and providing the software and, if installation by the Supplier has also been agreed in a particular case, its obligations concerning installing the software. Acceptance of the software shall not in any way impair the Customer's rights under Article 22.6 regarding minor defects and Article 25 regarding the guarantee.

22.9 In the absence of an expressly agreed invoicing schedule, all amounts pertaining to development of the software shall be owed when the software is delivered or, if installation by the Supplier has also been agreed in a particular case, when the installation is completed.

## **SOFTWARE USE AND MAINTENANCE**

In addition to the General Provisions in these General Terms and Conditions, the provisions set forth in this Chapter "Software Use and Maintenance" shall apply to all software provided by the Supplier. The rights and obligations referred to in this Chapter shall pertain solely to computer software in a form which is readable for a data processing machine and recorded on material which is readable for such a machine, as well as to related documentation, all of this including any new versions to be furnished by the Supplier. Where this Chapter mentions "software", this shall also refer to websites.

### **23. Right of use**

23.1 Subject to the provisions in Article 6, the Supplier shall grant the Customer the non-exclusive right to use the software. The Customer shall always strictly comply with the use restrictions agreed between the Parties. Subject to the other provisions in these General Terms and Conditions, the Customer's right of use shall only include the right to load and run the software.

23.2 The Customer may only use the software in its own company or organisation on the one processing unit and for a specific number or type of users or terminals for which the right of use has been furnished. Insofar as not otherwise agreed, the Customer's processing unit on which the software is used for the first time and the number of terminals connected to that processing unit at the time of initial use shall be considered the processing unit and number of terminals for which the right of use has been furnished. In the event there is a malfunction in the aforementioned processing unit, the software can be used on another processing unit for the duration of the malfunction. The right of use may pertain to multiple processing units insofar as this is expressly apparent from the Agreement.

23.3 The right of use shall not be transferable. The Customer shall not be allowed to sell, lease, sub license or alienate the software and data carriers on which it has been recorded, grant restricted rights to this software or these data carriers or provide them to a third party in any manner or for any purpose whatsoever, give a third party remote or non-remote access to the software or place the software with a third party for hosting, not even if the third party in question will only use the software for the Customer's benefit. The Customer shall not modify the software except in connection with fixing errors. The Customer shall not use the software to process data for third parties ("time-sharing"). The software's source code and the technical documentation generated in developing the software shall not be made available to the Customer, not even if the Customer is prepared to pay financial compensation for making them available. The Customer acknowledges that the source code is confidential in nature and that it includes the Supplier's trade secrets.

23.4 The Customer shall immediately return all copies of the software in its possession to the Supplier after the right to use the software ends. If the Parties have agreed that the Customer shall destroy the copies concerned when the right of use ends, the Customer shall provide written notice of such destruction to the Supplier immediately.

### **24. Delivery, installation and acceptance**

24.1 The Supplier shall deliver the software to the Customer on the agreed type and format of data carriers and, if installation by the Supplier has been agreed in writing, shall install the software at the Customer's. In the absence of express agreements in this regard, the Customer itself shall install, set up, design parameters for and tune the software and, if necessary, adjust the equipment and user environment used in this connection. Unless expressly otherwise agreed, the Supplier shall not be required to convert data.

24.2 If an acceptance test has been agreed between the Parties in writing, the provisions in Articles 22.2 to 22.7 shall apply by analogy. If the Parties have not agreed on any acceptance test, the Customer shall accept the software in the condition in which it is at the time of delivery, hence, with all apparent and non-apparent errors and other defects, without prejudice to the Supplier's obligations under the guarantee of Article 25. The provisions in Article 22.8 shall apply fully in all cases.

24.3 In the absence of an expressly agreed invoicing schedule, all amounts pertaining to making the software available and the right to use the software shall be owed when the software is delivered or, if installation by the Supplier has also been agreed in writing in a particular case, when the installation is completed.

### **25. Guarantee**

25.1 The Supplier shall do its utmost to fix errors in the software within the meaning of Article 6.6 to the best of its ability within a reasonable time period if they have been reported in writing and in detail to the Supplier within three months after delivery or, if an acceptance test has been agreed between the Parties, within three months after acceptance. The Supplier does not warrant that the software shall operate without interruption, errors or other defects or that all errors and other defects shall be corrected. Repairs shall be performed free of

charge, unless the software has been developed at the Customer's instruction other than for a set price, in which case the Supplier shall charge the repair costs according to its usual rates. The Supplier may charge the repair costs according to its usual rates if there have been operating errors or improper use on the Customer's part or other causes not imputable to the Supplier or if the errors could have been ascertained when the agreed acceptance test was conducted. The guarantee shall not include fixing mutilated or lost data. The guarantee obligation shall be extinguished if the Customer makes changes or has changes made to the software without the Supplier's written permission, which permission shall not be withheld on unreasonable grounds.

25.2 Errors shall be fixed at a location to be determined by the Supplier. The Supplier shall be entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the software.

25.3 The Supplier shall not have any obligations concerning fixing errors reported after the expiry of the guarantee period referred to in Article 25.1, unless the Parties have concluded a maintenance agreement which includes such a duty to fix.

## **26. Maintenance**

26.1 If a maintenance agreement has been concluded for the software or if the user's fee for the software includes maintenance, the Customer shall provide detailed notice to the Supplier of the errors observed in the software in accordance with the Supplier's usual procedures. After receiving the notice, the Supplier shall, to the best of its ability, do its utmost to fix errors within the meaning of Article 6.6 and/or to make improvements in later, new versions of the software. Depending on the urgency, the results shall be provided to the Customer in the manner and within the time period to be determined by the Supplier. The Supplier shall be entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the software. In the absence of express agreements in this regard, the Customer itself shall install, set up, design parameters for and tune the corrected software or the new version provided and, if necessary, adjust the equipment and user environment used in this connection. Unless expressly otherwise agreed, the Supplier shall not be required to convert data.

26.2 The Supplier does not warrant that the software shall operate without interruption, errors or other defects or that all errors or other defects shall be corrected.

26.3 The Supplier may charge the repair costs according to its usual rates if there have been operating errors or improper use on the Customer's part or other causes not imputable to the Supplier or if the software has been modified by others besides the Supplier. Maintenance shall not include fixing mutilated or lost data.

26.4 If a maintenance agreement has been concluded, the Supplier shall provide improved versions of the software to the Customer when they become available. The Supplier shall no longer be required to fix any errors in the old version or to provide support regarding an old version three months after an improved version becomes available. In providing a version with new options and functions, the Supplier may require the Customer to enter into a new agreement with the Supplier and to pay a new fee for this version being made available.

26.5 If the Customer does not enter into a maintenance agreement with the Supplier at the same time that the agreement to provide the software is concluded, the Supplier cannot be required to enter into a maintenance agreement at a later time.

26.6 In the absence of an expressly agreed invoicing schedule, all amounts pertaining to maintaining software shall be owed before the maintenance period commences.

## **27. Software from the Supplier's supplier**

27.1 If and insofar as the Supplier provides software from third parties to the Customer, those third parties' terms and conditions shall replace the provisions in these Terms and Conditions and shall apply with regard to that software, provided that the Supplier notifies the Customer in writing. The Customer shall accept the aforementioned third-party terms and conditions. These terms and conditions shall be available for the Customer's inspection at the Supplier's and the Supplier shall send these terms and conditions free of charge to the Customer at its request. If and insofar as the aforementioned third-party terms and conditions are deemed or declared inapplicable to the relationship between the Customer and the Supplier for whatever reason, the provisions in these General Terms and Conditions shall fully apply.

## **SALE OF EQUIPMENT**

In addition to the General Provisions in these General Terms and Conditions, the provisions set forth in this Chapter "Sale of Equipment" shall apply if the Supplier sells equipment to the Customer. Insofar as the purport of the following provisions is not inconsistent with this, the term "equipment" shall also include separate equipment parts.

## **28. Selection of equipment, delivery and risk**

28.1 The Customer shall bear the risk of selecting the equipment purchased. The Supplier shall not warrant that the equipment is appropriate for the use intended by the Customer, unless the intended uses have been clearly specified without reservation in the written purchase agreement between the Parties.

28.2 The equipment sold by the Supplier to the Customer shall be delivered to the Customer at the site of the Supplier's warehouse. The Supplier shall deliver the equipment sold to the Customer or have it delivered at a location to be designated by the Customer only if this has been agreed in writing. The Supplier shall inform the Customer before delivery in as timely a manner as possible of the time which it or the carrier used intends to deliver the equipment. The delivery times indicated by the Supplier shall always be indicative.

28.3 Equipment shall be delivered at the agreed location for the agreed purchase price. Unless expressly otherwise agreed, the equipment's purchase price shall not include the costs of transport, insurance, rigging and hoisting, leasing temporary facilities and the like.

28.4 The risk of loss and theft of and damage to the equipment shall pass to the Customer when it is delivered to the Customer. If a carrier is used for the delivery (whether or not at the Customer's request or instruction), the risk of loss, theft and damage shall, however, already pass to the Customer when the equipment is delivered to the carrier.

28.5 The Supplier shall package the equipment in accordance with the usual standards it applies. If the Customer desires a specific manner of packaging, it shall bear the related additional costs. The Customer shall handle the packaging released with the products delivered by the Supplier in a manner that is consistent with the applicable government regulations. The Customer shall indemnify the Supplier against third-party claims based on non-compliance with such regulations.

## **29. Environment requirements and installation**

29.1 The Customer shall ensure an environment which meets the requirements specified by the Supplier for the equipment in a particular case (for example, concerning temperature, humidity, technical environment requirements and the like).

29.2 If the Parties have expressly agreed on this in writing, the Supplier shall install the equipment or have it installed. Any requirement by the Supplier to install equipment shall not include the requirement to install software or to convert data.

29.3 If the Supplier has undertaken to perform installation, the Customer shall provide a suitable installation site with all necessary facilities, such as cable work and telecommunications facilities, before delivery of the equipment and follow all instructions of the Supplier necessary for the installation.

29.4 To enable the Supplier to perform the necessary work, the Customer shall give the Supplier access to the installation site during the Supplier's normal working days and hours.

## **30. Guarantee**

30.1 The Supplier shall do its utmost to fix, to the best of its ability, any defective material and manufacturing defects in the equipment, as well as in parts delivered by the Supplier in connection with the guarantee or maintenance within a reasonable time period and free of charge, if these have been reported, with a detailed description, to the Supplier within three months after delivery. If, in the Supplier's reasonable judgment, repairs are not possible, will take too long or will entail disproportionately high costs, the Supplier shall be entitled to replace the equipment free of charge with other, similar, but not necessarily identical, equipment. The guarantee shall not include data conversion which is necessary due to repairs or replacement. All parts replaced shall be the property of the Supplier. The guarantee obligation shall be extinguished if the defective material or manufacturing defects result in whole or in part from incorrect, careless or incompetent use, from external causes such as fire or water damage, or if, without the Supplier's permission, the Customer makes changes or causes changes to be made to the equipment or to the parts delivered by the Supplier in connection with the guarantee or maintenance. The Supplier shall not withhold such permission on unreasonable grounds.

30.2 The Supplier shall charge work and repair costs falling outside the scope of this guarantee in accordance with its usual rates.

30.3 The Supplier shall not have any obligations concerning fixing errors reported after the expiry of the guarantee period referred to in Article 30.1, unless the Parties have concluded a maintenance agreement which includes such a duty to fix.

## **31. The equipment of the Supplier's supplier**

31.1 If and insofar as the Supplier provides equipment from third parties to the Customer, those third parties' terms and conditions shall replace the deviating provisions in these Terms and Conditions and shall apply with regard to that equipment, provided that the Supplier notifies the Customer in writing. The Customer shall accept the aforementioned third-party terms and conditions. These terms and conditions shall be available for the Customer's inspection at the Supplier's and the Supplier shall send these terms and conditions free

of charge to the Customer at its request. If and insofar as the aforementioned third-party terms and conditions are deemed or declared inapplicable to the relationship between the Customer and the Supplier for whatever reason, the provisions in these General Terms and Conditions shall fully apply.

### **MAINTENANCE OF EQUIPMENT**

In addition to the General Provisions in these General Terms and Conditions, the provisions set forth in this Chapter "Maintenance of Equipment" shall apply if the Supplier and the Customer have concluded an agreement for maintenance of equipment.

#### **32. Duration of the maintenance obligation**

32.1 The agreement to maintain equipment shall be entered into for the term agreed between the Parties, in the absence of which a one-year term shall apply.

32.2 The term of the Agreement shall be tacitly extended each time by the length of the original period, unless the Customer or the Supplier terminates the Agreement in writing with due observance of a notice period of three months before the end of the period concerned.

#### **33. Maintenance**

33.1 The substance and scope of the maintenance services to be provided by the Supplier and any related service levels shall be recorded between the Parties in a written agreement. In the absence of such an agreement, the Supplier undertakes to do its utmost to remedy, to the best of its ability and within a reasonable time period, malfunctions which have been properly reported to the Supplier by the Customer. In this Chapter, "malfunction" shall mean not meeting the equipment's specifications expressly made known by the Supplier in writing, or not meeting these specifications without interruption. A malfunction shall only exist if the Customer can demonstrate it and it can be reproduced.

33.2 The maintenance shall be performed during the Supplier's normal working days and working hours.

33.3 The Supplier reserves the right to suspend its maintenance obligations during the time that, in the Supplier's judgment, there are circumstances at the site where the equipment is to be set up which entail risks to the safety or health of the Supplier's employees.

33.4 The Supplier shall ensure that its expertise concerning the equipment is kept up-to-date. The Supplier shall register and record in its administration all relevant data concerning the work performed on the equipment. Upon request, the Supplier shall allow the Customer to examine the data recorded.

33.5 Parts shall be replaced if this is necessary in the Supplier's judgment to fix or prevent malfunctions. The parts replaced shall be or remain the Supplier's property.

#### **34. Maintenance and use terms and conditions**

34.1 The Customer shall immediately inform the Supplier after a malfunction occurs in the equipment by having one of its employees with expertise in this area draw up a detailed description of the malfunction. The Supplier shall be obliged to give access to the Supplier's employees or third parties designated by the Supplier to the site of the equipment, to provide all other necessary cooperation, and to make the equipment available to the Supplier for the maintenance work.

34.2 At the Supplier's request, an employee of the Customer with expertise in this area shall be present during the maintenance work for consultation. The Customer shall be entitled to be present during all work to be performed for the Customer.

34.3 The Customer shall not be entitled to connect equipment and systems not delivered by the Supplier to the equipment sold to the Customer and to install software not delivered by the Supplier on it. The Customer shall be responsible for the costs of examining and remedying malfunctions which occur through connecting equipment not delivered by the Customer or installing software not delivered by the Supplier.

34.4 If, in the Supplier's judgment, maintenance of the equipment requires that the equipment's connections be tested with other systems or equipment, the Customer shall provide these other systems or this other equipment, as well as the relevant test procedures and data carriers, to the Supplier.

34.5 Test material necessary for maintenance work which is not part of the Supplier's normal equipment shall be provided by the Customer.

34.6 The Customer shall arrange for the technical, spatial and telecommunications facilities which are necessary to allow the equipment to operate. "Maintenance" shall expressly not include the aforementioned facilities and terminals.

34.7 The Customer shall bear the risk of loss or theft of or damage to the equipment during the period that the Supplier has the equipment in its possession for the maintenance work. The Customer shall be responsible for insuring this risk. Before the equipment is provided to the Supplier for maintenance, the Customer shall ensure that a proper

and complete back-up copy has been made of all software and data recorded in the equipment.

34.8 The Supplier shall not accept any maintenance obligations for equipment not set up in The Netherlands, unless expressly otherwise agreed in writing.

34.9 In the absence of an expressly agreed invoicing schedule, all amounts relating to maintenance of equipment shall be owed when the maintenance period commences.

#### **35. Exclusions**

35.1 Work to examine or repair malfunctions which arise from improper use of the equipment or external causes, such as defects in communication lines or in the power supply, or connections with and/or use of equipment, software or materials not covered by the Agreement, shall not be part of the Supplier's obligations under the Agreement, and shall be charged to the Customer separately at the usual rates.

35.2 The maintenance price shall not include:

- replacing consumer goods, such as, for example, magnetic storage media and printer ribbons;
- replacement costs for parts as well as maintenance services for remedying malfunctions which are caused in whole or in part by attempts to repair made by others besides the Supplier;
- work to service the equipment in whole or in part;
- equipment modifications;
- moving, relocating or reinstalling equipment or work resulting from this.