

1. Definitions

In these general conditions, the following capitalised terms have the stated meaning (words in the singular include the plural and vice versa):

- 1.1. **Documentation:** all agreed documentation required for the proper use of the Goods and/or belonging to the Goods, as well as quality marks and/or certificates;
- 1.2. **Settels:** Settels Savenije Group of Companies B.V. (Chamber of Commerce no. 17069987), Settels Savenije Advanced Systems B.V. (Chamber of Commerce no. 64764729), Settels Savenije van Amelsvoort B.V. (Chamber of Commerce no. 18036943) or an affiliate or party yet to be incorporated;
- 1.3. **Goods:** goods to be delivered, work to be performed and/or services to be provided by Settels, including Resources and/or Documentation;
- 1.4. **Resources:** materials, drawings, calculations, formulas, models, moulds, instructions, designs, styles, compositions, procedures, working methods, know-how, specifications, and other resources provided, purchased, developed or produced by or behalf of Settels, directly or indirectly, alone or with others, to benefit the Other Party or a Delivery;
- 1.5. **IP:** all intellectual and/or industrial property rights, including but not limited to trade names, trademark rights, copyrights, design rights and patent rights of Settels, or embodied in or arising from the Goods.
- 1.6. **Delivery:** placing Goods in the possession or under the control of the Other Party (Delivery occurs only after the Other Party has paid everything that they owe to Settels and the retention of title stipulated by Settels has ceased to apply);
- 1.7. **Offer:** a proposal from Settels, including quotations and price lists.
- 1.8. **Agreement:** any agreement between Settels and the Other Party, whether or not in writing and whether or not arising from an Offer or an order confirmed by Settels, any amendment or addition to it, and all legal acts for its preparation and/or performance, based on which Settels sells, delivers and/or provides Goods to the Other Party.
- 1.9. **In Writing/Written:** by post, electronic data transfer by fax, e-mail, internet, EDI, or any other common electronic commercial medium.
- 1.10. **Confidential Information:** the Offer, the Goods, the Agreement, all correspondence, information, knowledge and/or documentation relating to Settels, provided by Settels and/or otherwise in the possession of and/or known by the Other Party in relation to preparing for, concluding and performing the Agreement(s).
- 1.11. **Other Party:** the other party of Settels and the legal entities forming part of its group, and any natural person or legal entity that purchases Goods from Settels or enters into negotiations or consultations with Settels regarding Goods to be delivered or otherwise.

2. Applicability

- 2.1. These general conditions apply to all current and future legal acts, Offers and Agreements, or other ensuing or related agreements, performed by Settels, and to their formation and/or existence.
- 2.2. The applicability of other general conditions, however named and in whatever form, is expressly excluded, including if the Other Party has previously referred to such conditions. This also includes purchasing conditions and other general conditions of the Other Party. By accepting an Offer, placing an order, entering into an Agreement or accepting a Delivery, the Other Party unconditionally accepts that these general conditions apply and that the applicability of other general conditions, as referred to in this article, is excluded.
- 2.3. Settels' written acceptance is required before all or part of general conditions other than these can be declared applicable. If and insofar as other general conditions also apply, these general conditions will take precedence if any inconsistencies arise.
- 2.4. Any deviations from these general conditions that Settels applies or tolerates at any time to benefit the Other Party will never entitle the Other Party to invoke them later or to claim the application of such a deviation as established for themselves.
- 2.5. Settels may amend these general conditions at any time. The most recent version of these general conditions is available on Settels' website (www.settels.nl).
- 2.6. The annulment or invalidity of any provision of these general conditions does not affect the validity of the other provisions of these general conditions. If this occurs, the annulled provision will be replaced by a provision that the parties would have agreed if they had been aware of the nullity or voidability.

3. Contractual formation

- 3.1. Offers are free of obligation, indicative and can be revoked without prescribed form or giving reasons, even after the Other Party has accepted, unless explicitly stipulated otherwise in writing. Offers are valid for a period to be specified by Settels. If no such period exists, the Offer is without obligation. Settels may refuse orders from the Other Party without giving reasons. An Offer will lapse if the Goods to which it relates are not available.
- 3.2. An Agreement is formed as soon as the Other Party has stated in any way that they accept the Offer. In case of framework agreements, the Agreement is formed each time Settels receives a purchase order.
- 3.3. Agreements bind Settels only if they have been confirmed and/or signed in writing by an authorised representative of Settels. Acceptance of an Offer that differs from the content of the Offer is considered a rejection of the original proposal and is a new proposal that does not bind Settels. This also applies if the acceptance deviates from the Offer on minor points only. Any commitments made by representatives and/or employees of Settels do not bind Settels, unless and until Settels has confirmed them in writing.
- 3.4. Agreements are entered into under the condition precedent of approval by Settels' management board. This condition will be deemed fulfilled if the management board has not indicated within two working days of signing the Agreement and/or the Offer that it does not approve it. Agreements are entered into under the condition precedent that Settels believes, based on information it obtains, that the Other Party is sufficiently creditworthy.
- 3.5. Agreements cannot be cancelled by the Other Party without Settels' written consent, unless the parties reach written consensus on the compensation that the Other Party owes Settels if Settels accepts a cancellation. If Settels accepts a cancellation, at least 15% of the corresponding invoice value will be charged.
- 3.6. Obvious mistakes in Offers release Settels from its obligation to comply, and from the obligation to compensate any resultant damage, including after the Agreement is formed.
- 3.7. If several Goods are listed in an Offer and a price is stated for each of those Goods, the Offer only applies as a whole and the Other Party may not merely accept part of the Goods offered at the price stated for that purpose. All this applies unless explicitly agreed otherwise in writing.
- 3.8. If the Agreement is not recorded in writing and Settels nevertheless commences performing it with the Other Party's consent, the content of the Offer will serve as the Agreement. If partial Deliveries are made, the Agreement is deemed formed in its entirety as soon as the first partial Delivery is made.
- 3.9. Until Delivery, Settels may cancel the Agreement, if it believes there are good reasons, and then owes no form of compensation. Cancellation is effected by written notice.

4. Obligations of the Other Party

- 4.1. The Other Party must always provide Settels with all information that could be important for performing the Agreement. The Other Party must provide not only the information that Settels requests, but also information that they reasonably know or ought to know is important for performing the Agreement. If the Other Party does not provide this information, or do so on time, Settels may suspend its obligations under the Agreement until the information has been provided. Additional costs because of this delay are payable by the Other Party.
- 4.2. The Other Party warrants the accuracy and completeness of all data and information provided to Settels.
- 4.3. If the information Settels requires is not fully provided by the Other Party, despite repeated requests, Settels may terminate the Agreement with no prior notice of default. In such a case, Settels will never be liable to pay compensation. The Other Party will be liable to pay compensation to Settels instead.

- 4.4. Settels can never be held liable for damage that it causes based on incorrect and/or incomplete information, unless Settels knew or reasonably ought to have known about this inaccuracy.
- 4.5. The Other Party must ensure that work to be performed by third parties is performed in such a way and in such good time that Settels' performance of the Agreement is not delayed. If there is a risk of a delay, the Other Party must inform Settels immediately. The Other Party is liable for any damage resulting from the delay.
- 4.6. The Other Party warrants that no third-party rights preclude providing equipment, software, material, data files and/or other materials and/or designs intended for websites to Settels for the purpose of use, maintenance, processing, installation or integration. The Other Party indemnifies Settels against any third-party claim alleging that such provision, use, maintenance, processing, installation or integration infringes any right of that third party.
- 4.7. Unless expressly agreed otherwise, all Resources and Documentation remain the property of Settels or become the property of Settels at the time of purchase or manufacture. The Other Party must mark the Resources and Documentation as Settels' recognisable property, keep them in good condition and insure them at their own expense against all risks for as long as the Other Party acts as holder of those Resources and/or Documentation. The Other Party must always do everything that can reasonably be expected of them to safeguard Settels' property rights, for whatever reason. If Settels wishes to exercise any of its property rights, the Other Party hereby grants Settels and its designated third parties unconditional and irrevocable advance consent to enter all places where Settels' property is located and to repossess it.
- 4.8. The Other Party must provide the Resources and Documentation with any copies and relevant data carriers to Settels at their own expense and in good condition, immediately on Settels' request, simultaneously with the last Delivery of the Goods to which the Resources and/or Documentation relate, or as soon as the Resources and/or Documentation have served their purpose. Changes to or deviations from Resources and/or Documentation that Settels has provided or approved are permitted only with Settels' prior written approval. The Other Party may not use or have a third party use the Resources and/or Documentation for or in connection with any purpose other than the Delivery to Settels to which the Resources and/or Documentation relate, unless Settels has given its prior written consent for this purpose.
- 4.9. Unless Settels gives its prior written consent, the Other Party may not assign, pledge or otherwise encumber or transfer claims that it has or will acquire against Settels to third parties. These restrictions apply both regarding property law and the law of obligations.
5. **Prices**
 - 5.1. Unless explicitly agreed otherwise in writing, the prices in the Offer are free of obligation and subject to price changes.
 - 5.2. The prices stated in the Agreement are based on the circumstances that prevail when it is concluded, including purchase prices, material costs, taxes and levies. Settels expressly reserves the right to change its prices, even after the Agreement has been concluded, if and insofar as price determinants, including but not limited to the circumstances referred to above, give cause to do so. This also applies if the price-increasing factor was foreseeable when the Agreement was concluded. A price change will not take effect until the Other Party has been informed of it in writing. A price change does not entitle the Other Party to terminate the Agreement.
 - 5.3. Unless expressly agreed otherwise in writing, the prices charged by Settels are in euros and exclude VAT, import duties, other levies and other costs, including but not limited to transport costs, packaging costs, insurance costs, loading and unloading costs.
 - 5.4. Unless expressly agreed otherwise in writing, all prices and Deliveries are ex-works within the meaning of Incoterms 2010, with Eindhoven, the Netherlands as the location.
6. **Performance**
 - 6.1. Unless expressly agreed otherwise in writing, the Goods are at the risk of the Other Party as from Delivery.
 - 6.2. Settels will never be in default by the mere expiry of a term, including the delivery period. For this purpose, a written notice of default is always required, giving Settels a reasonable period in which to still comply. Settels may make partial deliveries. Delivery periods are stated as accurately as possible. Exceeding delivery periods will never constitute a ground for the Other Party to terminate the Agreement and/or to claim any compensation, even after notice of default has been given, unless Settels has acted with intent or been grossly negligent. Specified delivery periods do not start until the Agreement has actually been concluded, consensus has been reached on all details and Settels has all the information necessary for performing the Agreement and the like. The delivery period is based on the circumstances that prevail when the Agreement is concluded. If a delay occurs because of a change in these circumstances, the delivery period will automatically be extended accordingly, notwithstanding the provisions below on force majeure.
 - 6.3. If and as soon as Settels cannot perform the Agreement in the agreed and/or customary manner due to hindrance by the Other Party or any other cause attributable to the Other Party, the Other Party must compensate the resultant costs incurred and damage suffered by Settels. If the Other Party refuses to take delivery or fails to provide information or instructions necessary for Delivery, the Goods will be stored at the Other Party's expense and risk. In that case, the Other Party will owe all additional costs, including at least the storage costs. The Goods will then be deemed delivered from the moment they are stored.
 - 6.4. If Settels organises the transport of Goods, it does so at the Other Party's expense and risk. In that case, Settels may charge the shipping costs to the Other Party. Any insurance costs of the transported goods will also be payable by the Other Party. The Goods are always transported entirely at the Other Party's risk. All risks of transport of Goods that have been or will be delivered (such as the risk of loss, damage and/or depreciation) are borne by the Other Party from the moment the Goods leave Settels' warehouse. This concerns both direct and indirect damage, even if the Other Party claims that a clause on consignment notes, transport addresses etc. states that all transport damage is at the sender's expense and risk. All this applies unless explicitly agreed otherwise in writing.
 - 6.5. Settels may outsource the performance of all or part of the Agreement to third parties without the Other Party's consent. If the Other Party wishes to involve third parties in performing the Agreement, this may occur only with Settels' prior written approval.
 - 6.6. All assignments are deemed to have been exclusively given to and accepted by Settels, even if the explicit or implicit intention is for an assignment to be performed by specific individuals. Unless it has been expressly agreed with the Other Party in writing that the Agreement will be performed by a specific individual, Settels may freely determine which of its partners or employees will perform the Agreement. The effect of Section 7:404 of the Dutch Civil Code, which provides for the latter case, is completely excluded. The effect of Section 7:407(2) of the Dutch Civil Code, which establishes joint and several liability if two or more persons have received an assignment, is also completely excluded.
 - 6.7. The obligation to provide services under an Agreement is a best-efforts obligation based on the information provided by the Other Party and the nature of the Agreement, unless the Agreement expressly provides in writing for a single action or result.
 - 6.8. If, as soon as, and for as long as the Other Party fails to fulfil one or more of their obligations towards Settels under an Agreement with Settels and/or these general conditions, or fails to do so on time or properly, or if Settels becomes aware of circumstances that give it good reason to fear that the Other Party will not fulfil their obligations, Settels may suspend all or part of its obligations towards the Other Party. In such a case, the Other Party must compensate Settels for all resultant damage suffered, including but not limited to the loss of profit and costs. If and as soon as the Other Party is in default, Settels may wholly or partially terminate the Agreement with the Other Party. Because of termination, reciprocal claims become immediately due and payable. The Other Party is liable for any damage then suffered by Settels, including loss of profit and costs. If Settels suspends or terminates the Agreement based on this article, it need not pay any compensation to the Other Party, however named. Unless the Other Party can prove otherwise, the item 'loss of profit' will amount to at least twenty-five per cent (25%) of the agreed price.
 - 6.9. Unless the insolvency practitioner or administrator recognises the obligations arising from the Agreement as estate debt, Settels may terminate all or part of the Agreement, with immediate effect, with no notice of default or judicial intervention, if and as soon as: the Other Party is granted a provisional or final moratorium on the payment of debts; is placed under guardianship; the debt restructuring arrangement under the Debt Restructuring (Natural Persons) Act (*Wet schuldsanering natuurlijke personen*) is declared applicable to the Other Party; the

Other Party dies; a petition for the Other Party's bankruptcy is filed or granted; their business is liquidated, terminated or discontinued, other than for the purpose of restructuring or a merger of businesses; the Other Party fully or partially assigns their estate; pre-judgment attachment or attachment in execution is levied on all or part of the Other Party's assets; the Other Party's business is sold; or there is a change in the Other Party's management. Settels will never be liable for any compensation because of this termination.

7. Complaints and warranty

- 7.1. The Other Party must immediately check the delivered Goods for conformity (including but not limited to correctness, quantity, defects, possible damage, etc.) upon Delivery.
- 7.2. Settels warrants that the Goods it delivers meet the usual requirements and standards that can reasonably be set at Delivery and for which they are intended under normal use in the Netherlands. If use occurs outside the Netherlands, the Other Party must verify whether their use is suitable for that country and meets the conditions set for use. In that case, Settels may give other warranties and set other conditions regarding the Goods. Settels provides no warranty in respect of Goods it does not manufacture. In that case, the factory warranty applies and the Other Party must approach the manufacturer directly. Unless agreed otherwise in writing, Settels never warrants that the Goods are suitable for a particular purpose.
- 7.3. The Other Party must submit its complaint(s) to Settels – or otherwise risk forfeiting its rights – within one (1) month of when they became aware or reasonably could have become aware of the defect, act and/or omission that caused their complaint. This moment will coincide with Delivery, unless the Other Party provides evidence to the contrary. Notwithstanding the above and contrary to Section 7:23 of the Dutch Civil Code, a complaint period of one (1) month and a prescription period of one (1) year apply in any case.
- 7.4. If a complaint is not made in time within the meaning of the previous article, the Goods will be deemed delivered to the Other Party in conformity with the Agreement, in good order, complete and with no defects or damage, and unconditionally accepted and approved by the Other Party. After that period, the Other Party may no longer assert any rights regarding any defect, shortage, damage, etc. relating to the delivered Goods.
- 7.5. If and insofar as Settels determines that the delivered goods do not conform to the Agreement, Settels will – at its discretion – deliver again or additionally, or reduce the purchase price proportionally. Unless Settels acts with intent, is grossly negligent or wilfully reckless, it need not pay any other compensation or indemnification, however named, under its warranty obligation. If and insofar as Settels supplies replacement Goods, the Other Party must return the defective Goods to Settels immediately at their expense. The Other Party may not return Goods about which they have complained without Settels' prior written consent. If this nevertheless happens, all costs associated with the return shipment are payable by the Other Party. In that case, Settels may store the Goods (at third parties) at the Other Party's expense and risk or keep them at the Other Party's disposal. The costs and risks of transport relating to return shipments are for the Other Party's account. Settels need not deal with complaints about minor deviations in quality, quantity, colours, finish, size, weight, etc. that are considered acceptable in commercial dealings or technically unavoidable. The Other Party must refrain from using or allowing the use of Goods that have been found to be defective, and store them so Settels can investigate or arrange for the Goods to be investigated, until Settels has finalised the complaint. If it is established that a complaint is unfounded, the Other Party must compensate Settels for the resultant costs incurred (including investigation costs) and damage suffered.
- 7.6. The Other Party must notify Settels in writing of complaints regarding its invoices within eight (8) days of the date of the invoice. After the expiry of that period, objections can no longer be accepted for processing and the Other Party will have forfeited their alleged rights.
- 7.7. If and as soon as the Goods delivered by Settels are modified or processed by the Other Party in any way, or are fully or partially damaged, packaged, repackaged, or not stored, transported, kept, used or processed under statutory regulations, instructions given by Settels (relating to storage, transport, processing, etc.), or generally applicable practices or standards, or if the Goods delivered are resold to a third party, the Other Party's right to compensation or replacement of the delivered Goods will cease to apply. The warranty given by Settels will also irrevocably cease to apply if the defects and/or malfunctions are due to normal wear and tear, use after the best-before or expiry date, incorrect, injudicious or improper use, incorrect storage or maintenance, external causes, if the Other Party makes changes to the Goods or has changes made without Settels' permission, or force majeure. In such cases, there can be no liability on the part of Settels. The same applies if the Other Party has used the Goods while they knew or could reasonably have known that the Goods were defective.
- 7.8. A complaint or its submission will never release the Other Party from its payment obligations.
- 7.9. The travel time, travel and accommodation expenses, and transport costs associated with the warranty are not covered by the warranty and are payable by the Other Party.

8. Payment and security

- 8.1. Unless expressly agreed otherwise in writing, payment must be made within thirty (30) days of the invoice date. If the invoice amount has not been paid in full by the due date, the Other Party will be in default by the mere expiry of the period, with no need for a demand or notice of default. Payment terms are deemed to be strict deadlines. The data from Settels' records constitute full evidence of the performances rendered by Settels and the amounts that the Other Party owes for them, notwithstanding the Other Party's right to provide evidence to the contrary.
- 8.2. If Settels does not receive payment within the period referred to in paragraph 1 of this article, the Other Party must pay Settels interest at the statutory commercial rate under Section 6:119a of the Dutch Civil Code plus 2%, and all Settels' claims against the Other Party, for whatever reason, will become immediately due and payable in full. For calculating the interest on the amount due, part of a month counts as a full month. In that case, the Other Party must also reimburse Settels for all costs it incurs in collecting the outstanding amounts, namely: a) invoices from lawyers regarding their work, both in and out of court, including in excess of amounts liquidated by the court, costs of bailiffs, authorised agents and collection agencies, as well as all execution costs. The extrajudicial costs are fixed at 15% of the principal sum, subject to a minimum of €500.00; and b) the costs of filing for bankruptcy.
- 8.3. Payments made by the Other Party always settle all costs and interest owed and then the longest outstanding invoices, even if the Other Party states that the payment relates to a later invoice. All payments must be made with no deduction, discount or setoff.
- 8.4. Even during the performance of an agreement and regardless of whether one or more outstanding invoices have not been paid or have not been paid in full, Settels may always require advance payment or a bank guarantee, or at least equivalent security, as a guarantee for payment of the amount owed. The Other Party must then comply with this request. In that case, Settels is also authorised to suspend the fulfilment of its obligations towards the Other Party until payment has been made or security has been provided. This also applies if Settels has reasons to doubt the Other Party's willingness to pay and/or creditworthiness. If the Other Party refuses to comply with Settels' requirements, Settels may regard the agreement as terminated, notwithstanding its rights to compensation for all damage, costs and loss of profit.
- 8.5. If attachment is levied against the Other Party at any time, the Other Party must report this to Settels within 24 hours.
- 8.6. If the Other Party is not the end user of the products or services delivered by Settels, Settels may inform the end user about this if a payment delay of at least three (3) months occurs and possibly conclude an agreement directly with the end user.
- 8.7. Any reliance by the Other Party on suspension or setoff is expressly excluded, unless Settels has given its prior written consent to a specific suspension or setoff and it has unconditionally recognised the claim against which setoff occurs or the reason for the suspension in writing.
- 8.8. Settels may also always exercise its rights described in this article against a company affiliated with the Other Party, for any claim it may have against the Other Party and/or a company affiliated with the Other Party.
- 8.9. A company is deemed affiliated with another company if 50% or more of that company belongs to the same owner, if 50% or more control over it is directly or indirectly exercised by that other company or if it directly or indirectly exercises 50% or more control over that other company and/or if 50% or more of it belongs with that other company to the same group of companies.

9. Liability

- 9.1. Settels is liable for a failure to perform only if that failure has been caused by its serious negligence or because it has acted incorrectly and this can be seriously attributed to it. Settels' liability towards the Other Party is always limited to the warranty referred to in Article 7 of these general conditions, namely to deliver again or additionally, or to reduce the purchase price proportionally.
- 9.2. Settels is not liable in any case for damage resulting from Goods not complying with local or other regulations and/or safety or other requirements, whether or not applicable at the place(s) where the Other Party is established or sells the Goods. The Other Party must ensure that the Goods it purchases from Settels, whether or not for resale, comply with all local or other regulations and/or safety or other requirements, including for resale.
- 9.3. Settels is likewise not liable for damage if the Other Party has insured themselves against that damage, or could reasonably have insured themselves. The Other Party indemnifies Settels against claims of insurers or third parties in this respect.
- 9.4. Settels is never liable for indirect damage, including consequential damage, loss of profit, lost savings, immaterial damage, damage due to business interruption, direct trading loss or environmental damage, etc., unless this results from Settels acting with intent or wilful recklessness. The Other Party indemnifies Settels against third-party claims in this respect.
- 9.5. If and insofar as Settels would be liable, notwithstanding the provisions of this article, its liability, regardless of the basis, is limited, if damage to Goods occurs, to repair and replacement costs capped at the principal amount excluding VAT as stated on the relevant invoice, or up to that part of the invoice to which the liability relates with a maximum of €200,000.00. If injury is caused to persons and in all other possible cases, Settels' liability, regardless of the basis, is always limited to the payment to which Settels is entitled under its liability insurance plus the excess that Settels pays under that insurance. If and insofar as no payment is made under that insurance, for whatever reason, Settels' liability, regardless of the basis, will always be capped at €50,000.00.
- 9.6. Insofar as third parties that Settels has hired to perform the Agreement limit their liability in that regard, all Agreements with Settels imply its authority to also accept such liability limitations on behalf of the Other Party. Any liability of Settels for unexpected failures of these third parties to perform is excluded. If Settels purchases Goods from third parties, the contract, warranty and/or liability-limiting provisions applicable to that relationship also apply to the Other Party. The Other Party indemnifies Settels against all costs, damage and interest that may arise from third-party claims, whether or not against the Other Party, regarding incidents, acts or omissions during or in relation to performing the Agreement, or in connection with defects in the Goods delivered by Settels. The Other Party must take out insurance for this purpose. By accepting these general conditions, the Other Party grants Settels irrevocable authorisation to receive payments from their insurer(s) on their behalf.
- 9.7. Settels is not liable for advice given on products to be applied or other advice, unless a separate consultancy agreement has been concluded with the Other Party, under which the Other Party gives something in return for Settels' consultancy work. If and insofar as Settels would be liable, notwithstanding the provisions of this article, for consultancy services, this liability is always capped, regardless of the basis, at the invoice amount of the consultancy services performed, and if the consultancy is ongoing at the invoice amount of one year or, if lower, the preceding year.
- 9.8. Settels indemnifies the Other Party against any third-party claim based on the allegation that software, websites, data files, equipment or other materials developed by Settels itself infringe an intellectual property right of those third parties, on the condition that the Other Party immediately informs Settels in writing of the existence and content of the claim and leaves handling the case, including entering into any settlements, entirely to Settels. The Other Party must provide Settels with the necessary authorisations, information and cooperation to defend itself against these claims. This obligation to indemnify will cease to apply if the alleged infringement relates (i) to materials or information provided to Settels by the Other Party, whether or not for use, modification, processing or maintenance, or (ii) to changes that the Other Party has made or had made to the software, website, data files, equipment or other materials without Settels' written permission. If it is irrevocably established at law that the software, websites, databases, equipment or other materials developed by Settels itself infringe any intellectual property right belonging to a third party or if Settels believes there is a reasonable chance that such an infringement will occur, Settels will, if possible, ensure that the Other Party can continue to use the delivered software, websites, databases, equipment or materials or their functional equivalent. Any other or more far-reaching obligation of Settels to indemnify due to infringement of a third-party intellectual property right is excluded.

10. Force majeure

- 10.1. If Settels cannot meet its obligations under the Agreement, including the warranty obligation referred to in Article 7, because of a force majeure situation or another extraordinary circumstance, such as fire, strikes, stagnation in the supply of goods, measures imposed by the State, unexpected defects and/or malfunctions at Settels or its suppliers, Settels' obligations will be suspended as long as the force majeure situation continues and Settels may fully or partially perform the Agreement at a later time.
- 10.2. If it is already immediately apparent that the force majeure is permanent or if the force majeure has lasted longer than six (6) months, either party may fully or partially terminate the Agreement, without Settels being obliged to compensate the Other Party for any damage.
- 10.3. Settels may also invoke force majeure if the circumstance preventing performance or further undisturbed performance occurs after Settels should have fulfilled its obligation.
- 10.4. Insofar as Settels has fulfilled any of its obligations under the Agreement when the force majeure occurs, it may invoice the fulfilled part separately. The Other Party must pay this invoice as if it were a separate Agreement.
- 10.5. If force majeure occurs, Settels may also amend the Agreement so fulfilment becomes reasonably possible. The increased or reduced costs arising from the amendment to the Agreement will be settled between the parties, while the Other Party must pay Settels a fee for work already performed and/or deliveries already made, even if this work and/or the deliveries are not useful to the Other Party.

11. Retention of title

- 11.1. All Goods delivered and still to be delivered remain Settels' exclusive property until all claims Settels has or will have against the Other Party, including at least the claims under Section 3:92(2) of the Dutch Civil Code, have been paid in full. In such a case, rights will be granted or transferred to the Other Party under the condition precedent that the Other Party has paid all amounts due under the Agreement. Settels is authorised to retain the data, documents, software and/or data files received or produced under the Agreement and/or to deny the Other Party access to certain services, despite an existing obligation to issue, transfer or provide access, until the Other Party has paid all amounts owed to Settels, for whatever reason.
- 11.2. As long as the ownership of the Goods has not been transferred to the Other Party, the Other Party may not encumber, alienate, raise money on, rent out or in any way or on any basis allow the Goods out of its physical control, subject to the following provision. The Other Party may sell the Goods as part of their normal business operations, on the understanding that until they have paid for the Goods in full and fulfilled their other obligations towards Settels, for whatever reason, Settels will assume the Other Party's rights towards their customer(s). These rights expressly include all existing or future claims and actions because of damage to or loss of the Goods. Insofar as necessary, the Other Party states that if this situation arises they will transfer these rights to Settels, which hereby accepts this transfer.
- 11.3. Besides the retention of title referred to in paragraph 1 of this article, Settels reserves an undisclosed pledge on all Goods delivered to the Other Party and still owned by Settels as security for the Other Party's fulfilment of all existing and future claims that Settels has or will have against the Other Party, for whatever reason. Immediately at Settels' request, the Other Party must cooperate in drawing up and registering a deed for that purpose.
- 11.4. The property-law consequences of the retention of title of an item intended for export will be governed by the law of the destination State if and insofar as that law contains more favourable provisions in this respect for Settels.

- 11.5. Settels is entitled, with no notice of default or judicial intervention, to repossess the Goods at the Other Party if and as soon as the Other Party is in default of their obligations, has or threatens to have payment difficulties, and/or a circumstance occurs as referred to in Article 6.9 of these general conditions. The Other Party must compensate Settels for the costs incurred, damage suffered and loss of profit resulting from repossessing the Goods.
- 11.6. If Settels wishes to exercise any of its property rights, the Other Party hereby grants Settels and its designated third parties unconditional and irrevocable advance consent to enter all places where Settels' property is located and to repossess it. The Other Party must always inform Settels of the location of the Goods.
- 11.7. The Other Party must inform Settels immediately of any third-party actions relating to Goods belonging to Settels, and when any circumstance as referred to in Article 6.9 of these general conditions occurs.
- 11.8. The Other Party must store the Goods delivered subject to retention of title with due care and as recognisable property of Settels. The Other Party must properly insure and keep the Goods in their possession and delivered subject to retention of title insured against fire, explosion, water damage, theft, etc. and allow Settels to inspect this insurance policy immediately on request. By accepting these general conditions, the Other Party grants Settels an irrevocable authorisation to receive payments from their insurer(s) on their behalf.
- 11.9. The provisions of this article do not affect Settels' other rights.
- 12. Intellectual property (IP)**
- 12.1. The IP vests exclusively in Settels, its licensors or its suppliers. All written and electronic documents, CDs, DVDs and other data carriers embodying IP remain the property of Settels.
- 12.2. The Other Party acquires only those rights of use expressly granted by these general conditions, the Agreement and/or the law. A right of use to which the Other Party is entitled is non-exclusive and cannot be transferred, pledged or sublicensed.
- 12.3. Notwithstanding the provisions of paragraph 1 of this article, the intellectual property rights embodied in equipment that Settels has made on the Other Party's instructions and based solely on the Other Party's drawings or technical documentation vest in principle in the Other Party.
- 12.4. If Settels has made equipment on the Other Party's instructions not based solely on the Other Party's drawings or technical documentation, the intellectual property rights to this equipment do not vest in the Other Party until the Other Party has paid all that they owe to Settels, for whatever reason, the parties have made arrangements regarding the intellectual property rights concerned in mutual consultation, and these arrangements have been recorded in writing and signed by both parties. Until that time, the provisions of paragraph 1 of this article will apply in full.
- 12.5. The Other Party may not use Goods whose IP vests in Settels, including but not limited to reproduction, publication, in any form, and the full or partial copying, processing, modification or storage of those Goods, unless Settels gives its prior, express and written consent.
- 12.6. Immediately at Settels' request, which Settels may make at any time, the Other Party must provide Settels with all data and data carriers in which Settels' IP is embodied within eight (8) days.
- 12.7. The Other Party may not remove, arrange for the removal of, alter or arrange for the alteration of any reference from or on the Goods to their confidential nature or to copyrights, trademarks, trade names, any other intellectual property right, or provisions and/or security thereof in that respect.
- 12.8. Insofar as permitted by law, the Other Party hereby waives all personality rights on behalf of their personnel and/or those they involve in performing the Agreement.
- 12.9. If a dispute arises over who is the owner of the Goods or who is the holder of the IP, Settels will be the sole owner or rightholder, unless the Other Party can provide proof to the contrary.
- 12.10. The Other Party will also impose the obligations under this article on all natural persons and legal entities that the other Party arranges to perform work and/or otherwise involves under the Agreement. If the Agreement ends and/or Delivery has been made, this article will remain in full force between Settels and the Other Party.
- 12.11. If the provisions of this article are contravened, the Other Party will forfeit an immediately due and payable penalty of €50,000.00 (fifty thousand euros) for each contravention, plus €5,000.00 (five thousand euros) for each day or part of a day that the contravention continues, to Settels with no need for a prior demand or notice of default. This provision does not affect the Other Party's obligation to compensate Settels for all damage that has arisen or will arise because of the Other Party's actions, if this damage exceeds the sum of the above penalty amounts. Settels remains entitled at all times – if necessary, in interim relief proceedings – to demand specific performance of the Agreement and/or obtain an injunction on unlawful acts.
- 12.12. If the Other Party has not applied for a patent or other protection of the intellectual property rights embodied in the Goods concerned within twelve months of Delivery, Settels may do this itself, on the understanding that it grants the Other Party a free, worldwide and perpetual right of use in this respect, provided that the Other Party has paid all that it owes Settels for whatever reason. This right of use is non-exclusive and cannot be transferred, pledged or sublicensed.
- 13. Confidentiality**
- 13.1. The Other Party must observe the secrecy of the Confidential Information, except insofar as it concerns Confidential Information that is publicly known (other than because of an attributable breach or wrongful act by the Other Party), must be disclosed under any applicable statutory provision, rule or other regulations, or until Settels has given its express written consent for the full or partial discontinuation of the secrecy and/or the duty of confidentiality.
- 13.2. The Other Party undertakes to use the Confidential Information only if and insofar as necessary for performing the Agreement(s). The Other Party undertakes to provide the Confidential Information to third parties and/or employees only if and insofar as necessary for performing the Agreement(s) and not before the Other Party has imposed a duty of confidentiality equivalent to that contained in these general conditions on those third parties and/or employees. The Other Party warrants to Settels that these third parties and/or employees will continue to comply with this duty of confidentiality.
- 13.3. If the Other Party must disclose certain information under a statutory obligation, a binding rule or binding regulations, it must give Settels written notice in due time before that disclosure.
- 13.4. The duty of confidentiality remains in full force even after Delivery or the end of an Agreement.
- 13.5. If the provisions of this article are contravened, the Other Party will forfeit an immediately due and payable penalty of €25,000.00 (twenty-five thousand euros) for each contravention, plus an amount of €2,500.00 (two thousand, five hundred euros) for each day or part of a day that the contravention continues, to Settels with no need for a prior demand or notice of default. This provision does not affect the Other Party's obligation to compensate Settels for all damage that has arisen or will arise because of the Other Party's actions, if this damage exceeds the sum of the above penalty amounts. Settels remains entitled at all times – if necessary, in interim relief proceedings – to demand specific performance of the Agreement and/or obtain an injunction on unlawful acts.
- 13.6. Unless Settels gives its prior written consent, the Other Party may not maintain business contact with third parties involved in the Agreement, except insofar as necessary to perform the Agreement.
- 14. Applicable law and competent court**
- 14.1. All acts performed by Settels, including any Offer, Agreement and other agreements concluded by it, are governed exclusively by Dutch law. The applicability of the Vienna Sales Convention (CISG) and/or other international sales conventions on movables is expressly excluded.
- 14.2. All disputes relating to and/or arising from any Offer, Agreement, any other agreement concluded by Settels, or any further ensuing or related agreements in the broadest sense, including those disputes only considered as such by one party, will be exclusively settled by the competent Dutch court in the judicial district of Oost-Brabant, notwithstanding the right to bring an appeal to a Court of Appeal or the Supreme Court of the Netherlands.

- 14.3. If the Other Party has a registered office, a principal place of business and/or trades in a country that is not an EU Member State and/or if a situation occurs outside the scope of Regulation (EU) No 1215/2012 of 12 December 2012 or its equivalent, Settels may, notwithstanding the provisions of Article 14.2, submit a dispute to the Netherlands Arbitration Institute under the Arbitration Regulations of that institute. The arbitration tribunal will consist of one arbitrator. The arbitration tribunal will be appointed under the list procedure. The place of arbitration will be Eindhoven, the Netherlands. The proceedings will be conducted in English.
- 14.4. If and as soon as Settels has brought proceedings before the Netherlands Arbitration Institute, this body will have exclusive jurisdiction to settle the dispute in question and the Dutch court in the judicial district of Oost-Brabant will no longer be competent.
- 14.5. Notwithstanding the provisions of this article, Settels may also approach the competent Dutch court in the judicial district of The Hague in a cross-border case to obtain a European order for payment.
- 14.6. These general conditions have been drawn up in Dutch and English. If any discrepancy arises between the English and Dutch texts, the Dutch text will be binding.