

## General Terms & Conditions

General Terms and Conditions of PL-Systems B.V.

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*Version October 2017*

These General Terms and Conditions govern the legal relationship between the Contractor and its Clients. The General Terms and Conditions have been divided into different modules focusing on the various forms of service provision offered by the Contractor. They consist of the following modules:

- Module A. General
- Module C. Hosting / SaaS
- Module H. Maintenance and support

Where a specific module applies, it prevails over the General Module. To the extent the general section does not contravene the applicable provisions stipulated in the specific modules, the general section will always apply. The definitions of the terms written with a capital letter apply to all modules.

### Definitions

In these General Terms and Conditions, the terms below have the following meanings:

- **Acceptance test:** a delineated compulsory test performed by the Client in order to round off the Project.
- **General Terms and Conditions:** these terms and conditions, which are made up of a number of modules.
- **Service:** the service to be supplied by the Contractor, including the development and/or maintenance of software, applications, etc. The Agreement specifies which Services are involved and these General Terms and Conditions set more detailed rules for specific Services.
- **Defect:** failure to satisfy the Specifications.
- **User:** the user or end user who uses the Service/Project provided by the Contractor on the Client's behalf.
- **Hardware:** equipment supplied by the Contractor to the Client.
- **Materials:** for example, applications (web or other), software, advice or reports.
- **Employee:** an employee, freelancer or self-employed worker without employees or an agent hired from a third party by the Contractor who are deployed by the Contractor for the benefit of the Client or who perform activities for the Client.
- **Module:** a module of these General Terms and Conditions containing provisions relating to a specific area of activity.

- **Client:** the natural person or legal entity with whom the Contractor has concluded an Agreement, as well as its representative(s), authorised agent(s), the acquiring legal entities/person(s) and beneficiaries.
- **Contractor:** the contractor, with its registered offices in Veen and registered with the Chamber of Commerce under number 67004520 and a member of ICTWaarborg.
- **Agreement:** the agreement between the Contractor and the Client.
- **Force Majeure:** a shortcoming which cannot be attributed to the debtor, if it cannot be blamed for it, or if the shortcoming cannot be ascribed to the debtor under the law, legal transaction or by convention.
- **Project:** the work carried out by the Contractor on behalf of the Client, as described in the quotation and/or Agreement.
- **Project Management System:** electronic system that can be used for the management of the Project and for communication between the Contractor and the Client about the implementation of the Agreement.
- **Results:** the results of the activities carried out by the Contractor under the Agreement.
- **In Writing:** includes e-mail and fax communication, provided that the sender's identity and the message integrity have been sufficiently established.
- **Specifications:** the functional and technical description of the Project.
- **Website:** <http://www.pl-systems.nl>

## Identity of Contractor

|                    |                                                            |
|--------------------|------------------------------------------------------------|
| Name (Contractor)  | PL-Systems B.V.                                            |
| Operating as       | PL-Systems B.V.                                            |
| Registered address | Maasdijk 369a, 4264 AP Veen                                |
| Postal address     | Maasdijk 369a, 4264 AP Veen                                |
| Telephone          | 085-1307440                                                |
| E-mail             | <a href="mailto:info@pl-systems.nl">info@pl-systems.nl</a> |
| VAT number         | NL8568.66.064B01                                           |
| CoC number         | 67004520                                                   |

## Module A. General

### Article A.1. Quotation, offer and acceptance

A.1.1 A quotation drawn up by the Contractor is without obligation and will be valid for 14 days after the date on which it was sent by the Contractor, unless stated otherwise in the quotation.

A.1.2 The Client should preferably accept the quotation in Writing, but if the Client accepts or creates the impression that it has accepted it by other means, the Contractor may consider the quotation as

accepted.

A.1.3 The Client's provisions or terms and conditions that differ from, or do not appear in, these General Terms and Conditions will only be binding for the Contractor if, and to the extent that, these have been explicitly accepted by the Contractor in Writing.

A.1.4 Without prejudice to the power of the Contractor to withdraw the quotation in accordance with Article A.1.1., the Agreement may only be changed after acceptance with the consent of both parties. In the event of a conflict between the provisions in the documents below, the following order of precedence applies: (1) the Agreement; (2) any appendices, apart from brochures; (3) these General Terms and Conditions; (4) any additional conditions, apart from brochures.

## **Article A.2. Implementation of the Project & provision of information**

A.2.1 Following conclusion of the Agreement, the Client will carry out the Project as soon as possible, in accordance with the offer, taking into account any reasonable wishes of the Contractor. The Contractor will endeavour to carry out the Project to the best of its ability, exercising due care and professionalism. The Client is obliged to enable the Project to be implemented correctly and in a timely manner. In particular, the Client shall ensure that all information required for the implementation of the Project is made available to the Contractor in time.

A.2.2 If the Client fails to do the above, the Contractor is entitled to charge extra costs and it is possible that the Project will overrun. Any delay to the Project caused by the Client is reported via the Project Management System or, if no project management system is being used for the Project, by email, or by another means in Writing.

## **Article A.3. Term, termination and dissolution**

A.3.1 The Agreement will be deemed as having been terminated if the services stipulated in it have been provided by both parties.

A.3.2 Contrary to Article 3.1, agreements for services are tacitly extended on a monthly basis after the end of the term. Such agreements are terminated in Writing.

A.3.3 The delivery dates given by the Contractor are always an indication only. In the event of an agreed final delivery date, the Contractor will first be in default after the Client has declared it to be in default in Writing, subject to the mandatory situations prescribed by law in which default occurs by operation of law.

A.3.4 If the Client fails to perform any obligation to which it is subject under the Agreement, the Contractor has the right to suspend performance of all agreements concluded with the Client, without requiring notice of default or judicial intervention, and without prejudice to the Contractor's right to compensation, loss of profit and interest.

A.3.5 The Contractor has the power to dissolve or suspend the Agreement in full or in part with immediate effect, without judicial intervention, in Writing and without any obligation to pay compensation or grant indemnification, if: the Client has not fulfilled the obligations in the Agreement; after concluding the agreement, circumstances arise that provide reason to fear that the Client will not fulfil its obligations; if requested security has not been forthcoming; due to delay on the Client's side the

Contractor can no longer be required to fulfil the Agreement; in the event of death, moratorium on payments, winding up order, liquidation of activities, seizure of assets, or circumstances rendering fulfilment impossible.

A.3.6 Any claims owed by the Client to the Contractor shall become immediately due and payable upon dissolution of the Agreement.

A.3.7 If dissolution is attributable to the Client, the Contractor has the right to compensation for any damage/losses, arising either directly or indirectly as a result thereof.

#### **Article A.4. Procedure upon termination of the Agreement**

A.4.1 Upon termination of the Agreement, the parties are mutually obliged to immediately return any property in their possession which the other party owns or is entitled to. Certain goods, such as data (and data carriers) may be erased or destroyed instead of being returned, if the entitled party has given consent to this in Writing.

A.4.2 All data provided or entered by the Contractor remains its property at all times. The Client only receives a non-exclusive, transferable licence which is necessary to implement the Agreement.

#### **Article A.5. Prices**

A.5.1 Prices are exclusive of sales tax (VAT) and other duties levied by the government.

A.5.2 If a price in an offer is based on information provided by the Client and the information proves to be incorrect, the Contractor has the right to adjust the prices to reasonable prices based on the correct information.

A.5.3 All prices given in the quotation are subject to typing and calculation errors.

#### **Article A.6. Terms of payment**

A.6.1 The Contractor will send the Client an invoice for the amount payable. If the Project is delivered in phases, the Contractor is entitled to invoice at the completion of each phase, monthly or based on hours worked. The payment term for invoices is within 14 days of the date of the invoice, unless agreed otherwise.

A.6.2 If the Client has failed to make the full payment in good time, effective 30 days after the payment term the Client will be held in default by operation of law. A contractual interest of 2% per month and an administrative charge of EUR 15 will be payable on the outstanding amount.

A.6.3 In the event the Client fails to pay by the due date, the Client is obliged to pay any and all judicial and extra-judicial collection costs, including the costs of lawyers, bailiffs and debt-collection agencies.

A.6.4 The amount due is payable immediately in the event of involuntary liquidation, moratorium, death, or dissolution of the Client's business.

A.6.5 The Contractor will have the right to terminate or suspend implementation without notice of default or judicial intervention, and without the Client being entitled to compensation.

## Article A.7. Additional work

A.7.1 If the volume of work increases as a result of the Client's requirements beyond the quotation, this constitutes additional work.

A.7.2 The Contractor will notify the Client as soon as possible and request approval in Writing for the proposed additional work including the delivery period.

A.7.3 The Client will always take the decision on proposed additional work within five (5) working days.

A.7.4 The Client is responsible for any overrun of the delivery periods due to additional work.

A.7.5 The provisions of these General Terms and Conditions apply to all additional work.

## Article A.8. Liability

A.8.1 The Contractor's liability for direct damage/losses is limited to a sum equal to the payments the Client is obliged to make under this Agreement each year (excluding VAT). Under no circumstances will the total compensation for any direct loss or damage exceed **EUR 25,000** (excluding VAT).

A.8.2 The Contractor's total liability for damage/loss arising from death or physical injury or material damage to property will under no circumstances exceed a sum of **EUR 500,000** for each event causing damage.

A.8.3 The Contractor's liability for indirect loss or damage, including consequential loss, loss of profit, lost savings, corruption or loss of data, and losses due to business stagnation is excluded.

A.8.4 Except for paragraphs 1 and 2, the Contractor will not be held liable for any damage/losses whatsoever. The exclusions and limitations cease to apply if the damage is a consequence of an intentional act or wilful recklessness on the part of the Contractor's management.

A.8.5 The Contractor's liability will only arise if the Client immediately notifies the Contractor of its default in Writing, setting a reasonable period to remedy the failure.

A.8.6 Any right to claim compensation is subject to notification of the damage within 30 days of it arising.

A.8.7 The Client will indemnify the Contractor against all third-party claims on account of liability resulting from a defect in the Project/Service provided to a third party.

A.8.8 Contractor liability for shortcomings in the products and Services of third parties, including software, is expressly ruled out.

## Article A.9. Failures and Force Majeure

A.9.1 Neither party may be bound to perform any obligation if a circumstance beyond the parties' control negates every reasonable opportunity to perform.

A.9.2 Force Majeure includes: (a) failures of the Internet or other telecommunication facilities; (b) shortcomings by parties on whom the Contractor depends; (c) defective items, Hardware or Materials imposed by the Client; (d) unavailability of staff members; (e) government measures.

A.9.3 In the event of Force Majeure, fulfilment of obligations will be suspended without the parties being liable to pay compensation.

A.9.4 The party invoking Force Majeure shall endeavour to ensure that the shortcoming continues for as short a period as possible.

A.9.5 If a Force Majeure situation has lasted for thirty (30) days, or will continue for more than three months, each party has the right to terminate the Agreement in Writing.

#### **Article A.10. Intellectual property rights**

A.10.1 The Contractor or its licensors hold all intellectual property rights to all Materials developed or made available within the context of the Project.

A.10.2 The Client will acquire only the exclusive user rights explicitly assigned in Writing.

A.10.3 The Client is not permitted to remove or modify any markings relating to copyrights, trademarks, trade names or other intellectual property rights.

A.10.4 The Contractor is permitted to take technical measures to protect the Materials; the Client is not permitted to remove or circumvent such protection.

A.10.5 Any use outside the scope of the Agreement will infringe the intellectual property of the Contractor.

A.10.6 The Client will pay the Contractor a penalty of **EUR 5,000** per act of infringement and **EUR 25,000** for each deliberate act of infringement, plus EUR 5,000 per day that an ongoing infringement continues after notification.

#### **Article A.11. Processing personal details**

A.11.1 If the Contractor is to process personal data, the provisions in this article apply as obligations within the meaning of the Dutch Data Protection Act ("Wbp") / GDPR.

A.11.2 The Contractor processes personal data solely under the supervision of the Client and solely for the purpose of making available its Services. The Client is the controller; the Contractor is the processor.

A.11.3 The personal data that can be processed in this regard are further specified within the Agreement.

A.11.4 From 25 May 2018 onwards, the corresponding provisions of the GDPR apply.

A.11.5 The Contractor shall make reasonable efforts to have sufficient technical and organisational measures in place considering the state of the technology, sensitivity of data, and costs involved.

A.11.6 The Contractor ensures that persons acting under its authority only process personal data on the Client's instructions.

A.11.7 The Contractor may process personal data within the EU and, with Client approval, outside the EU in compliance with applicable laws.

A.11.8 The Client approves engagement of third parties for processing, provided such third parties agree in writing to the same duties.

A.11.9 The Client warrants lawful provision of personal data and indemnifies the Contractor against related claims.

A.11.10 The Contractor will facilitate data subject rights requests to the best possible extent; costs may be invoiced separately.

A.11.11 The Client has the right to conduct an audit by an independent third party bound to confidentiality, at its own expense, when there are specific grounds for suspecting misuse.

A.11.12 All personal data is subject to a duty of confidentiality vis-à-vis third parties.

A.11.13 The Contractor will inform the Client of a data breach **within 48 hours** of discovery to enable the Client to comply with breach notification obligations.

A.11.14 The breach notification includes: date, cause, date of discovery, number and group of affected individuals, data encryption status, measures taken, and contact details.

A.11.15 Upon expiration of the Agreement, Contractor shall delete or return the personal data at the Client's choice.

#### **Article A.12. Staff**

A.12.1 Where an Employee has to perform activities at the Client's site, the following provisions apply.

A.12.2 The Client shall provide all necessary support to enable Employees to carry out their work properly and safely.

A.12.3 The Contractor ensures the Employee has the correct job description and skills; the Client may not select specific Employees unless expressly agreed.

A.12.4 The Client may not limit access to certain Employees only, nor is there any guarantee of a permanent team.

A.12.5 During the term of the Agreement and for two (2) years after its end, the Client shall not employ or engage Employees of the Contractor without Written consent, subject to a penalty of **EUR 10,000** per breach plus **EUR 500** per day the breach continues.

#### **Article A.13. Confidentiality**

A.13.1 The Parties will treat information exchanged as confidential if marked as such or if the recipient should reasonably assume confidentiality. This obligation is imposed on employees and third parties engaged.

A.13.2 The Contractor will not access Client data unless required for proper performance of the Agreement or legally compelled.

A.13.3 This obligation remains in force after termination of the Agreement, for as long as the information remains confidential in nature.

#### **Article A.14. Amendments to the General Terms and Conditions**

A.14.1 In the case of a continuing performance agreement, the Contractor reserves the right to amend or supplement the General Terms and Conditions.

A.14.2 Amendments apply to existing agreements with a term of 30 days following publication. Minor changes can be implemented at any time.

A.14.3 If the Client does not accept an amendment, it may terminate the Agreement before the new terms take effect.

### **Article A.15. Settlement of disputes**

A.15.1 The Agreement is exclusively governed by Dutch law.

A.15.2 All disputes will be settled through mediation offered by ICTWaarborg.

A.15.3 The parties bear half of the Mediation costs each.

A.15.4 Mediation comprises two phases: consensual solution, then a binding agreement.

A.15.5 Parties may submit disputes to the competent Dutch court only with mutual explicit written prior consent.

### **Article A.16. Concluding provisions, General Module**

A.16.1 If any provision is declared null and void, the validity of the Agreement as a whole remains unaffected.

A.16.2 If disputes cannot be settled through the settlement arrangements, they will be brought before the competent court in Amsterdam.

A.16.3 Information and notices on the Contractor's Website may be subject to errors.

A.16.4 Communications received or stored by the Contractor (including log files) shall be regarded as authentic, subject to proof to the contrary.

A.16.5 The Contractor has the right to show third parties which Projects it provides to the Client for promotional purposes.

A.16.6 The Contractor has the right at all times to engage third parties in performing the Agreement.

A.16.7 Rights and obligations under the Agreement may be transferred to third parties with Written consent of the other party.

## **Module C. Hosting / SaaS**

This module applies to the data and/or applications made available and retained remotely (hosting) via the Internet or another network, including the registration and management of domain names.

### **Article C.1. Execution**

C.1.1 Following conclusion of the Agreement, the Contractor will perform the Service as soon as possible, in accordance with the offer.

C.1.2 The Agreement specifies when installation begins.

C.1.3 The Contractor will configure and manage the application with due care and professionalism.

C.1.4 The Client shall ensure that all required data and facilities are provided to the Contractor in good time.

### **Article C.2. Term of the agreement**

C.2.1 The Agreement is entered into for a minimum term of **twelve (12) months**. After that, the Agreement continues indefinitely. Either party may terminate with at least **one (1) month's** Written notice.

### **Article C.3. Rules of conduct**

C.3.1 The Client will refrain from storing and/or distributing material contravening Dutch law, including: insulting, defamatory, offensive, racist, discriminatory or hate-inciting material; erotic or pornographic material (unless explicitly permitted); material infringing third-party rights (copyrights, trademarks, portrait rights); material violating privacy; unsolicited communications or spam; or malicious content such as viruses or spyware.

C.3.2 The Client will refrain from obstructing other clients or inflicting damage on the Contractor's servers.

C.3.3 Damage arising from Client incompetence or non-compliance with these rules is payable by the Client.

C.3.4 The Contractor is entitled at its discretion to restrict the Client's management capabilities to prevent damage and security risks.

### **Article C.4. Licence**

C.4.1 The Client grants the Contractor an unlimited licence to distribute, store, forward or copy all Materials supplied, solely to fulfil the Agreement.

### **Article C.5. Indemnification**

C.5.1 The Client indemnifies the Contractor against all third-party legal claims relating to Client's use of the Services.

C.5.2 If the Contractor is required by authorities to perform activities involving Client information, all costs are chargeable to the Client.

### **Article C.6. Provision of services and availability**

C.6.1 All Services are performed on a best-efforts basis, unless an explicit result is pledged.

C.6.2 Electronic transmission of Client data is for the Client's account and risk.

C.6.3 The Contractor is never obliged to provide a physical data carrier with the remote applications.

C.6.4 The Contractor will undertake to keep downtime to a minimum.

C.6.5 The Contractor provides no guarantee of exact uptime unless otherwise agreed in an SLA.

C.6.6 Subject to proof of the contrary, availability measured by the Contractor serves as complete proof.

C.6.7 The Contractor cannot guarantee that third-party networks will be available at any particular time.

C.6.8 The Contractor may take reasonable measures to prevent risk to Services from excessive traffic, viruses, Trojan horses or similar.

C.6.9 The Contractor has the right to take Services out of operation temporarily for maintenance. No compensation is payable for damage arising from such maintenance unless expressly agreed.

C.6.10 The Contractor is only obliged to have an alternative centre if expressly agreed in Writing.

C.6.11 Unless provided otherwise, the Contractor is not obliged to make back-ups; it is the Client's responsibility to request a backup upon termination.

### Article C.7. Changes

C.7.1 The Contractor has the right to adapt the applications made available during the Agreement. The Client may continue using an older version only if technically feasible without disproportionate effort; additional costs may apply.

### Article C.8. Storage and data limits

C.8.1 The Contractor may impose a maximum limit on storage space or data traffic. If no limit is agreed, the Contractor's **fair use policy** applies. Exceeding the maximum authorises the Contractor to charge additional amounts.

### Article C.9. Procedure upon termination of the Agreement

C.9.1 Upon termination, the Client is given a reasonable opportunity to transfer its data to its own systems or a new supplier. The Contractor endeavours to provide data in a standard file format.

## Module H. Maintenance and Support

This Module applies to Services comprising the installation, configuration and/or maintenance of Materials and Services such as software, applications, websites, etc.

### Article H.1. Implementation

H.1.1 **Maintenance** means ensuring the functioning of existing or new Materials and remedying defects. **Support** means offering assistance with maintenance or working with the Materials.

H.1.2 The Contractor carries out activities as soon as possible in accordance with the offer.

H.1.3 The Agreement specifies remuneration: fixed fees, hourly rates, or subsequent calculations.

H.1.4 All Services are performed on a best-efforts basis, unless an SLA specifies results.

H.1.5 The Contractor provides no hard deadlines; response and repair times are endeavours unless an SLA applies.

### Article H.2. Term

H.2.1 The Agreement is entered into for a minimum term of **twelve (12) months**, continuing indefinitely thereafter with at least **one (1) month's** Written notice for termination.

### **Article H.3. Specifications and Client cooperation**

H.3.1 Where agreed, the Contractor installs and configures Materials on hardware and networks indicated by the Client. The Client ensures all required information is made available in time.

H.3.2 The Client shall allow Employees necessary access to computer systems. Physical access is only after prior consultation.

H.3.3 Selection, purchase and management of hardware and networks is the Client's sole responsibility. If unsuitable, the Contractor may refuse installation or configuration.

### **Article H.4. Updates and improvements**

H.4.1 Only if part of the Agreement will the Contractor adjust Materials to improve functionality and remedy faults.

H.4.2 Only if part of the Agreement will the Contractor keep Materials up-to-date; the Contractor may refuse updates detrimental to proper functioning.

H.4.3 Client-requested changes and new functionality are added where feasible; associated costs are communicated in advance.

H.4.4 If an update results in changed functionality with major impact, the parties will discuss consequences; additional hours may be invoiced separately.

H.4.5 Independent Client modifications to Materials are at the Client's own risk; the Contractor may cease to remedy bugs unless the modification was notified and Written approval given.

H.4.6 Unless otherwise agreed, end-user support (to customers of the Client) is not included.

### **Article H.5. Remote support**

H.5.1 Remote support is supplied by telephone, email, and other agreed channels.

H.5.2 The Contractor may suggest remote access software; the Client is responsible for ensuring its network allows such software to function.

H.5.3 If remote support does not yield a satisfactory solution, on-site consultation is arranged.

H.5.4 The Contractor is available for remote support on working days (Monday to Friday, excluding Dutch public and official holidays) from **09:00 to 17:00**.