

## Terms and conditions

Version: 2024

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- 1 GENERAL**
- 1.1 Applicability**
- 1.1.1 These terms and conditions apply to all offers and agreements and/or other legal relationships between Scope Marketing Technology B.V., hereinafter referred to as SMT and the Client.
- 1.1.2 SMT may amend these Scope Marketing Technology Terms and Conditions. The amended SMT General Terms and Conditions will apply, unless any changes are objected to in writing within 30 (thirty) days of the date of the change.
- 1.1.3 Changes to, as well as additions to, the General Terms and Conditions SMT and/or the agreements concluded between SMT and the Client, are only valid if they have been recorded in writing by SMT.
- 1.1.4 If the trade name used by the Client refers to several (legal) persons or companies, they will be jointly and severally liable for the fulfilment of all obligations under the agreement concluded with SMT.
- 1.1.5 The indications above the articles of these terms and conditions are for the sole purpose of making them easier to read. The content and purport of the article under a particular heading is not limited to that indication.
- 1.2 Definitions**
- 1.2.1 In the SMT General Terms and Conditions, the following words and terms are capitalized, among others. All of the following words and terms in the singular have the same meaning as in the plural and vice versa.
- 1.2.2 General Terms and Conditions for Third Parties:  
The General Terms and Conditions for Third Parties means the terms and conditions that apply to Third Party Products and Services.
- 1.2.3 API:  
Application programming interface: this defines the access to the application software behind it, on the basis of which a computer program can communicate with another program or component.
- 1.2.4 Application Software:  
The application that provides functionality to users. This can be a (software) SMT Product, a (software) Third Party Product or software of the Client or a third party licensed to the Client.
- 1.2.5 As is:  
The characteristics of the Product are not (fully) described and the Client indicates that it has sufficient knowledge and/or testing of the properties of the Product and that it will purchase the Product as it is offered. The Client buys for its own benefit and damages and the parties exclude an appeal to error. In the event of an As is delivery, the parties waive their right to invoke the provisions of Book 7:17 of the Dutch Civil Code and waive the right to invoke or claim (partial) dissolution or annulment of that agreement after the delivery or delivery.
- 1.2.6 SaaS (Software as a Service):  
includes making Application Software available by SMT directly and/or indirectly (by means of third parties) via Hosting.
- 1.2.7 Scope marketing technology B.V., also called SMT: Scope marketing technology B.V. and its legal successors or a successor to Scope marketing technology B.V. affiliated company or partner that enters into the legal relationship with the Client and has declared the SMT General Terms and Conditions applicable. Scope marketing technology B.V. also offers its Products and Services under the trade names: SCOPE Financial Technology, SCOPE FinTech Solutions and SCOPE FinTech
- 1.2.8 SMT Products and Services:  
All products and services provided by SMT, the resulting facilities and the related activities that do not originate from third parties and of which any intellectual property rights, industrial property rights and other rights are vested in SMT.
- 1.2.9 Backup:  
Backup copies of digital data and/or files.
- 1.2.10 Client(s):  
Customers/clients/suppliers/business partners etc. of the Client or Clients of Clients of the Client, etc.
- 1.2.11 Cloud Hosting:  
The On-demand availability computer system resources that provide a virtual cluster of computers that are constantly available over the Internet. Cloud services often have functions that are spread across multiple locations, with each location being a data center. Cloud hosting is a Third Party Product and Service.
- 1.2.12 Training:  
All courses, education, training and related activities.
- 1.2.13 Data Center:  
A facility where servers can be connected to networks, especially the Internet. Part of the Infrastructure is located in one or more Data Centers.
- 1.2.14 Third Party Infrastructure:  
That part of the Infrastructure that is managed and/or delivered by third parties via SMT to the Client and over which SMT cannot, in principle, carry out any control. This is a Third Party Product and Service.
- 1.2.15 Third Party Products and Services:  
All products and services provided by SMT, the resulting provisions and the related activities that originate from third parties.
- 1.2.16 Documentation:  
The further (functional) description of Products and Services provided to the Client
- 1.2.17 Fair Use:  
The Client's reasonable use of the Products and Services.
- 1.2.18 Fixed Price:  
As further described in Article 7.3.

- 1.2.19 **Errors:**  
The reproducible failure of Products and Services to (fully) comply with the Product and Services by indicating an error message or crashing the Products and Services.
- 1.2.20 **Guarantee:**  
As further described in Article 6.10.
- 1.2.21 **SMT Infrastructure:**  
That part of the Infrastructure that is managed by SMT in its Data Center(s) and that SMT can control.
- 1.2.22 **Identification:**  
Log-in name, passwords, addressing details and/or other codes.
- 1.2.23 **Custom:**  
The result of Products and Services to be developed or developed on behalf of the Client.
- 1.2.24 **Employee(s):**  
Employees employed by SMT or employees employed by a third party or self-employed persons hired by SMT.
- 1.2.25 **Post-calculation:**  
As further described in Article 7.5
- 1.2.26 **Item code:**  
The computer programming code mainly in binary format. After processing, the Object Code is immediately executable by a computer, but without reverse engineering, compilation or assembly.
- 1.2.27 **Maintenance:**  
As further described in Article 2.4
- 1.2.28 **Client:**  
Anyone who requests and orders the delivery or delivery of Products and Services.
- 1.2.29 **Process data:**  
The data entered within SaaS by the Client and/or the data entered by third parties.
- 1.2.30 **Products and/or Services:**  
All SMT Products and Services provided by SMT and/or Third Party Products and Services, the resulting provisions and the related activities.
- 1.2.31 **Public Infrastructure:**  
That part of the Infrastructure that is managed and/or provided by third parties and over which SMT has no control. This includes the internet.
- 1.2.32 **Standard Software:**  
General basic software, which has not yet been adapted, set up, configured, or implemented specifically for the Client. Such as the Product Scope CDD.
- 1.2.33 **Source code:**  
The computer programming code that can be displayed in a format that is readable and understandable to an intermediate-level programmer. This includes related Source code system documentation, comments, and procedural codes. The Source Code does not include the Object Code.
- 1.2.34 **Support:**  
As further described in Article 2.6
- 1.2.35 **Advance:**  
As further described in Article 7.6.
- 1.2.36 **Working days:**  
Normal Dutch working hours (9.00-17.00 CET) and days (Monday to Friday) excluding national holidays.
- 1.3 Confirmation**
- 1.3.1 Verbal promises, instructions or other statements of any kind made by employees of SMT are only legally valid and binding if confirmed in writing by authorized representatives of SMT.
- 1.4 Offers**
- 1.4.1 All offers from SMT are without obligation, unless explicitly stated otherwise in the offer in writing.
- 1.4.2 SMT's offers are based on the data, information and/or wishes provided by the Client in accordance with Article 1.6.
- 1.5 Agreements**
- 1.5.1 An agreement between SMT and the Client for which no further duration has been agreed has a duration of 1 (one) year if (af/on) delivery relates to a Service, for which an amount is charged periodically. If this agreement is not terminated or is not terminated in time, this agreement will be continued for a period of 1 (one) year.
- 1.5.2 Termination of the agreement will take place by means of a registered letter received by the other party no later than 3 (three) months before the extension of the agreement takes effect.
- 1.5.3 By way of derogation from Article 1.5.2. a continuing performance agreement applicable between the parties cannot be terminated as long as there is a further, partial and/or supplementary agreement in force between the parties. In that case, termination of the agreement will only take place on the date that the further, partial or supplementary agreement with the longest remaining term between the parties expires, with a minimum notice period of 3 (three) calendar months
- 1.5.4 Each of the parties is entitled to terminate the agreement in whole or in part by means of direct termination by means of a registered letter without judicial intervention, if the defaulting party, even after a written demand for a reasonable period of time, fails to comply with its obligations.

- 1.5.5 SMT also has the right, with immediate effect and without judicial intervention, by means of an extrajudicial declaration, to terminate the agreement and/or the offers in whole or in part by means of immediate termination or cancellation, without prejudice to its right to claim compensation, if Client is a natural person in the event of the death of Client, if Client submits a request for statutory debt restructuring, if an application for bankruptcy or suspension of payments is filed for the Client or if the Client is declared bankrupt or a suspension of payments is granted or if the Client's company is liquidated or terminated, other than for the purpose of reconstruction or merger of companies, or a substantial part of its assets is seized in a precautionary and/or executory manner or the Client's company loses the free disposal of its assets about this as well as, in the case of Consultancy and Assignment, if the (employment) relationship between SMT and the Employee comes to an end. In these cases, any claim of SMT against the Client is immediately and fully due and payable and does not make SMT liable to pay damages to the other party in connection with this termination.
- 1.5.6 After the end of the agreement, for whatever reason, the Client can no longer derive any rights from the agreement, without prejudice to the continued existence of the obligations of the parties that by their nature are intended to continue after the end of the agreement, such as but not limited to the obligations concerning property rights, confidentiality and non-compete clauses.
- 1.6 Cooperation/Duty to provide information on the part of the Client**
- 1.6.1 All assignments are carried out by SMT on the basis of the data, information, wishes and/or requirements made known to SMT by the Client.
- 1.6.2 The Client will provide SMT with all cooperation and will always provide all useful and necessary data and/or other information in a timely manner for the proper execution of the agreement. The Client will guarantee the accuracy of this data and/or other information.
- 1.6.3 If data, information, wishes and/or requirements necessary for the execution of the agreement are not available to SMT, or are not available to SMT in a timely manner and/or not in accordance with the agreements, or if Client fails to comply with its obligations in any other way, SMT will in any case have the right to terminate or dissolve the agreement or suspend the execution of the agreement and SMT will have the right to reimburse the costs incurred as a result in accordance with its usual rates to be charged.
- 1.6.4 In the event that changes or new facts should occur in the meantime in previously made available data, information, wishes and/or requirements, SMT will at all times, in consultation with the Client, be entitled to adjust the agreement to these new circumstances or to dissolve or terminate it by means of immediate termination.
- 1.6.5 In the event that SMT performs activities on location other than its own, the Client will provide the facilities reasonably required by SMT, such as a functional, decent workspace, free of charge.
- 1.7 Confidentiality/Non-Competition Clause**
- 1.7.1 SMT and the Client mutually undertake to maintain the confidentiality of all data and information about each other's organisation, clients, files and Products and Services, of which the parties become aware in the course of work on behalf of each other or on behalf of clients of the Client. Data and information may only be used for the execution of the agreement concluded between the parties.
- 1.7.2 The Client acknowledges that all Products and Services originating from SMT contain trade secrets of SMT and/or SMT's suppliers, and that the Client will treat all Products and Services originating from SMT as such.
- 1.7.3 SMT is entitled to place the name and logo of Client or its clients to which rights to the Products and Services have been granted on the SMT website and/or a reference list and to make these available to third parties for information.
- 1.7.4 During and up to 12 (twelve) months after the termination or dissolution of the agreement, the Client and its Clients shall not enter into any direct or indirect business, employment or other similar relationships with any Employee of SMT, except with the written consent of SMT. The foregoing applies mutatis mutandis to Clients of the Client. The Client must ensure that its Clients will comply with the aforementioned obligation.
- 1.7.5 In the event of a violation of the provisions of Article 1.7.4, the Client will owe an immediately due and payable penalty of € 80,000 (eighty thousand euros) per violation without further notice of default, without prejudice to SMT's right to claim compensation for the entire damage suffered.
- 1.8 Liability**
- 1.8.1 SMT's total liability will, with due observance of articles 1.8.2 and 1.8.3, be limited to compensation for direct damage and then to a maximum of the compensation (excluding VAT) that SMT has received from Client for the price stipulated for that agreement (excluding VAT) with a maximum of € 250,000 (two hundred and fifty thousand euros), whereby a series of related events counts as one event.

- 1.8.2 If the agreement also consists of a continuing performance agreement, with a term of more than 1 (one) year and SMT's liability arises from this continuing performance agreement, the stipulated price will be set on the total of the fees (excluding VAT) actually paid by Client to SMT on the basis of the continuing performance agreement for 1 (one) year (being the year in which the damage occurred) with a maximum from € 250,000 (two hundred and fifty thousand euros).
- 1.8.3 The total liability of both parties due to an attributable failure to comply with a warranty obligation and/or an offered indemnity is an exception to what is stated in Article 1.8.1. and 1.8.2: this is limited to twice the total of the fees (excluding VAT) that SMT has received from the Client for 2 (two) years, with a maximum of € 350,000,-, (three hundred and fifty thousand euros), whereby a series of related events counts as one event.
- 1.8.4 SMT has insured itself in respect of damages. In any case, SMT is not liable for further damage and will not compensate for this further damage that Client should suffer under the agreement concluded with SMT, however and for whatever reason, including possible claims against Client from third parties, then be covered by this insurance and actually compensated plus SMT's deductible, unless there is intent or deliberate recklessness.
- 1.8.5 SMT's total liability for damage caused by death or bodily injury shall in no event exceed €1,000,000 (one million euros), with a series of related events being considered as a single event.
- 1.8.6 Direct damage is exclusively understood to mean:
- a. The reasonable costs incurred to determine the cause and extent of the damage;
  - b. The reasonable costs incurred to prevent or limit damage, insofar as the Client demonstrates that these costs have led to the limitation of damage.
  - c. The reasonable costs incurred to repair damage, insofar as the Client demonstrates that these costs have led to the repair of damage and SMT, after a written request to that effect, is unable to offer a timely solution to repair damage.
- 1.8.7 SMT's liability for consequential damage is expressly excluded. Consequential damage is understood to mean damage other than direct damage exhaustively expressed in Article 1.8.6, such as, but not limited to, loss of profit, missed savings, destruction or loss of files and/or data, damage caused by delay, loss suffered, damage caused by the Client's failure to provide information and/or cooperation, damage due to business interruption or claims by third parties against the Client.
- 1.8.8 No event related to the execution of the agreement by SMT will be interpreted by the Client as an expression by SMT that SMT will fail to comply with its obligations, or that the fulfilment by SMT is permanently impossible, unless SMT expressly notifies the Client in writing with that intention.
- 1.8.9 Apart from the cases referred to in Article 1.8, SMT is not liable for any damages, regardless of the ground on which an action for damages would be based.
- 1.8.10 SMT's liability will only arise if the Client gives SMT, immediately and properly, a written notice of default, setting a reasonable period to remedy the shortcoming and SMT continues to imputably fail to comply with its obligations even after that period. The notice of default must contain a description of the shortcoming that is as detailed as possible, so that SMT is able to respond adequately.
- 1.8.11 A condition for the existence of any right to compensation is always that the Client informs SMT of this in writing by registered letter within 60 (sixty) days after the occurrence of the damage and takes such measures as possible to limit the damage as much as possible.
- 1.8.12 The Client indemnifies SMT against all claims from third parties due to liability as a result of a defect in a product, system or service delivered by the Client to a third party and which product, system or service also consisted of what was delivered or delivered by SMT.
- 1.8.13 SMT is not liable for damage of any nature whatsoever caused by Third Party Products and Services that SMT has delivered to the Client. If possible, SMT will transfer its rights to claim damages from the supplier of the Third Party Product in question to the Client.
- 1.8.14 Unless a service level agreement has been agreed to the contrary, SMT is not liable for damages of any kind resulting from the failure to provide Support, Maintenance and/or Warranty in a timely manner. SMT is not liable for damages of any kind whatsoever resulting from the fact that SMT has to comply with certain, changing and new legislation and other regulations
- 1.9 Transfer**
- 1.9.1 The agreement concluded between SMT and the Client and the rights and obligations arising therefrom cannot be transferred to third parties without SMT's prior written consent.
- 1.9.2 Client gives SMT the right in advance, without needing the explicit consent of Client, to transfer the entire agreement, or parts thereof, to:
- a. parent, sister and/or subsidiary companies;
  - b. a third party in the event of a merger or acquisition of SMT.

- 1.9.3 If this occurs, SMT will inform the Client accordingly.
- 1.10 Non-attributable Shortcoming**
- 1.10.1 Neither party shall be obliged to fulfil any obligation if it is prevented from doing so as a result of a circumstance which is not attributable to it, nor is it responsible for it by virtue of the law, legal act or generally accepted opinions. The aforementioned circumstances also include all circumstances beyond SMT's control, such as, but not limited to, shortcomings of SMT's suppliers, Errors in Third Party Products and Services, fire, explosion, power failure, (D)Dos attacks, hacking, cracking or any downtime or unavailability due to unlawful acts of third parties and/or due to (cyber)crime, (cyber) vandalism, destroying, damaging or rendering unusable any automated or telecommunications work by any person, causing disturbance in the corridor or operation of such work, or by anyone foiling any security measure taken in respect of such work, network failures, flooding, illness, the unavailability of one or more personnel, strikes, accidents, acts by the government, the impossibility of obtaining a required permit or permission, scarcity of materials, theft, war, terrorism, traffic disruption and/or transport obstacles.
- 1.10.2 If the non-attributable shortcoming is of a temporary nature, SMT may suspend the agreement until the relevant situation no longer occurs, without being obliged to pay any compensation.
- 1.10.3 SMT reserves the right, in the event of a non-attributable shortcoming, to claim payment for services already performed that SMT had already performed before the non-attributable shortcoming became known.
- 1.10.4 If the non-attributable shortcoming of one of the parties continues for more than three months, both parties have the right to dissolve the agreement separately in writing, without being obliged to pay any compensation regarding the dissolution.
- 1.11 Vanity**
- 1.11.1 If one or more provisions (or part of a provision) of the agreement are null and void, have been declared null and void, are voidable or have lost their validity in any other way, the other provisions (or the remaining part of the relevant provision) of the agreement will remain in full force and effect.
- 1.11.2 With regard to provisions (or the part of a provision) that are null and void, have been declared null and void, are voidable, or have otherwise lost their legal validity, the parties will consult with each other in order to make a replacement arrangement, in such a way that the parties will strive to maintain the purport of the agreement (or the remaining part of the relevant provision) in its entirety.
- 1.12 Governing Law and Dispute Resolution**
- 1.12.1 Dutch law applies to all agreements concluded by SMT with the Client, unless the parties have agreed otherwise in writing. The parties expressly declare that the Vienna Sales Convention does not apply.
- 1.12.2 Disputes between parties, which cannot be resolved in consultation, will be resolved by means of arbitration by the Foundation for the Resolution of Disputes in Organisation and Automation (SGOA), in accordance with the SGOA arbitration regulations by one arbitrator. With the mutual consent of the parties, an attempt may be made to resolve the dispute prior to arbitration by means of other dispute resolution facilities offered by SGOA.
- 1.12.3 If SGOA declares that it has no jurisdiction or if the parties mutually agree to do so, disputes will be submitted to the District Court of Amsterdam, sitting in Amsterdam.
- 1.12.4 The foregoing shall not, without waiving any right, constitute an obstacle for the parties to take precautionary legal measures and/or to institute summary proceedings, or to initiate collection proceedings at the District Court of Amsterdam, sitting in Amsterdam.
- 2 PRODUCTS**
- 2.1 Products and Services in general**
- 2.1.1 In the context of the cooperation with SMT, the Client makes explicit choices for the purchase of certain Products and Services, and more specifically in the context of Back-up facilities, Hosting and security measures.
- 2.1.2 The choices made by the Client in the purchase of these services have direct consequences for what the Client may expect from SMT in the context of the provision of services. The Client expressly waives all claims, claims or claims, directly or indirectly based on the position that more could be expected from SMT in the context of its services than SMT is obliged to do on the basis of the choices made by the Client for the purchase of these services.

2.1.3 If the Client believes that it does not have sufficient knowledge or skills to be able to make a well-considered choice with regard to the requirements or services to be purchased, the Client will indicate this to SMT in a timely manner on its own initiative, so that SMT can advise the Client on this. Please note that SMT does not advise Client on the manner of conducting customer surveys on the basis of the SMT Products and Services.

**2.2 Software Usage Rights**

- 2.2.1 SMT grants Client the non-exclusive right to use the Products and Services, with accompanying documentation.
- 2.2.2 The right of use is limited to the named users. SMT invoices on the basis of actual usage afterwards.
- 2.2.3 The right to use software, Products and Services is limited to the Object Code. Rights to and the Source Codes themselves are not granted, unless explicitly agreed otherwise in writing and/or unless the right of use concerns a reproduction that takes place in the context of loading, displaying or correcting errors.
- 2.2.4 The Client is prohibited from copying, duplicating or modifying the (Customized) Products and Services in any way whatsoever itself and/or by means of third parties, without having received SMT's prior written permission. The Client is prohibited from adding functionalities to (Customised) Products and Services.
- 2.2.5 The right to use the Products and Services is not transferable to third parties (third parties also include the Client's parent, sister and/or subsidiary companies).
- 2.2.6 The Client is not authorised to make the Products and Services available to third parties, whether or not for a fee, under any title whatsoever or in any manner whatsoever (third parties also include the Client's parent, sister and/or subsidiary companies).
- 2.2.7 Reverse engineering, decompilation or any other method of adapting the Products and Services to a human-readable form by the Client is prohibited, unless explicitly permitted by mandatory law.
- 2.2.8 The right of use will cease if no timely and full payment has been made by the Client and the other obligations incumbent on the Client have been met.
- 2.2.9 The scope of the right to use Third Party Products and Services is determined by the General Terms and Conditions Third Parties as set out in Article 5. Insofar as the foregoing does not deviate from the General Terms and Conditions for Third Parties, the foregoing shall apply mutatis mutandis.

**2.3 Controls**

2.3.1 SMT is entitled to incorporate technical restrictions and control mechanisms in the Products and Services in order to prevent and/or check that the agreed right of use is not exceeded.

2.3.2 Furthermore, as long as the Client makes use of the Products and Services, SMT is entitled, either itself or by means of a third party, to carry out unannounced inspections at the locations where the Products and Services are used. The Client will provide full cooperation and access to this. If Client refuses cooperation or access to SMT, SMT is entitled to terminate the agreement with immediate effect by means of immediate termination. In this case, the Client is no longer entitled to use the Products and Services and is obliged to return all Products and Services and destroy any copies made within 30 (thirty) days at SMT's first request to do so. SMT reserves the right to impose a fine on Client in such a case, in the amount of the stipulated price set on the total of the fees (excluding VAT) actually paid by the Client to SMT on the basis of the continuing performance agreement for 1 (one) year (being the year in which the damage occurred) with a maximum of € 250,000 (two hundred and fifty thousand euros).

2.3.3 If the aforementioned checks or otherwise show that the agreed right of use is exceeded, the Client must immediately purchase the number of missing licenses plus a penalty of 25% of the additional amount to be paid. Amounts due for Maintenance and Support for the missing licenses will be charged to the Client retroactively, up to the moment of the last (af/on) delivery of the previously agreed number of licenses. SMT also reserves the right to make a report to the Software Alliance (BSA).

**2.4 Maintenance**

- 2.4.1 Maintenance includes the provision of updates, including documentation, of the SMT Products and Services licensed to the Client that constitute a qualitative (e.g. Error Correction) or functional improvement of the SMT Product made available. SMT is not obliged to actively keep Client informed of any updates.
- 2.4.2 If Maintenance involves a functional improvement, SMT is entitled to charge additional costs to compensate for this functional improvement.
- 2.4.3 SMT is entitled to refuse the provision of Maintenance if the SMT Products and Services, or the environment in which the aforementioned SMT Products and Services operate, have been changed by Client in any form or in any way whatsoever.
- 2.4.4 If the Client refuses to install new updates that have been offered to the Client by SMT, SMT reserves the right to terminate the agreement by means of immediate termination, or to adjust the agreement to this refusal.

**2.5 Opinions**



- 2.5.1 All Products and Services that can be regarded as advice or have an advisory character, such as but not limited to Support (article 2.6), Consultancy (article 3.1.), Project Management, Feasibility study (article 8.1.) will only be provided to the best of our knowledge and ability.
- 2.5.2 SMT is not responsible and/or liable if the activities resulting from the advice result in a project of the Client not being able to be completed within the fixed budget, the fixed time and any other predetermined conditions.
- 2.5.3 SMT will give advice on the basis of preconditions indicated by SMT and information obtained from the Client as stated in article 1.6. If it turns out that not all relevant information has already been obtained and/or if other types of problems and/or insights may arise, such as but not limited to incompatibility problems (products which are incompatible with each other), the advice given may be adapted to this new situation.
- 2.6 Support**
- 2.6.1 Support includes providing verbal (telephone) and written (e-mail) advice regarding the use and operation of the SMT Products and Services. In principle, support is provided on the basis of an advance payment. If the Advance Payment is exceeded, a new Advance will be charged.
- 2.6.2 SMT will only provide Support on the most recent updates of the SMT Products and Services. SMT is entitled, at its sole discretion, to provide Support on older versions, releases, etc. of the SMT Products and Services.
- 2.7 Custom**
- 2.7.1 All assignments that consist partly or entirely of customization are settled on the basis of Fixed Price or against the actual time spent on Post-calculation.
- 2.7.2 The parties will specify in writing which SMT Product will be developed and how this will be done. SMT will carry out the product development with care on the basis of the data to be provided by the Client, with the accuracy, completeness and consistency for which the Client guarantees.
- 2.7.3 Prior to the performance of Customisation, SMT can provide the Client with an employment budget, including the initially expected work and costs. This budget is indicative only and not binding on SMT. Actual costs will be invoiced in accordance with article 2.7.1 on the basis of the actual time spent, unless explicitly agreed otherwise.
- 2.7.4 SMT is entitled, but not obliged, to investigate the correctness, completeness and/or consistency of the data or specifications made available to SMT and, in the event of any inaccuracies, omissions or inconsistencies, to suspend the agreed work until Client has removed the relevant imperfections.
- 2.7.5 The development of customization takes place according to the following primary phases:
- Functional design phase.
  - Technical design phase.
  - Development of modules phase.
- 2.7.6 If the Client does not wish to follow the aforementioned phases, this will be done entirely at the risk (and expense) of the Client.
- 2.7.7 Exceeding the price by up to 10% is deemed to have been tacitly accepted and does not have to be mentioned as such to and/or approved by the Client.
- 2.7.8 Intellectual property rights, industrial property rights or other rights of customization remain vested in SMT at all times, as described in article 8.1.
- 2.8 Additional work**
- 2.8.1 If SMT is of the opinion that a project change indicated by the Client is an additional work assignment, SMT will notify the Client of this before proceeding with the execution. At the Client's request, the notification will be followed by a statement of the price and other conditions. In each case, the Client will decide as soon as possible on the proposed additional work.
- 2.8.2 The Client will be deemed to have agreed to the performance of additional work and the associated costs if the Client has allowed the performance of the additional work to take place without first indicating in writing that it does not wish to have additional work.
- 2.9 Backups**
- 2.9.1 The Client is responsible for making Backups in a timely manner, if possible. At the Client's request, SMT will disclose the procedures that may be necessary for the security of data and for making Backups.
- 2.10 Work**
- 2.10.1 All work, Maintenance, Support or other services, will generally be carried out uninterrupted and on Working Days and under normal working conditions.
- 2.10.2 For each uninterrupted period in which SMT performs work for less than 4 (four) hours at a location other than SMT, SMT is entitled to charge for a minimum of 4 (four) hours. There is an uninterrupted period if the time in which no work is carried out between one period and the next period in which work is carried out does not exceed 1 (one) hour.
- 2.10.3 Work performed outside of Working Days is considered overtime. In the event of overtime before or after Working Days, the then applicable rate will be increased by a surcharge of 50%. In the event of overtime on weekends and public holidays, the then applicable rate will be increased by a surcharge of 100%.

- 2.10.4 If it has been agreed that work will take place in phases, SMT is entitled to postpone the commencement of the work, which belongs to a subsequent phase, until the Client has accepted the results of the preceding phase in writing.
- 2.10.5 Only if this has been expressly agreed in writing is SMT obliged to follow the instructions given by the Client in a timely and responsible manner when carrying out work. SMT is not obliged to follow instructions that change or supplement the content or scope of the agreed work; however, if such instructions are followed, the work in question will be reimbursed on the basis of subsequent calculation.
- 2.10.6 SMT is entitled, without the explicit permission of the Client, to engage third parties in the execution of work.

### 3 SAAS

#### 3.1 SaaS Service General

- 3.1.1 The Client is obliged to follow SMT's instructions regarding the SaaS.
- 3.1.2 SMT is entitled to inspect log files and the like for the purpose of analyzing the use of the SaaS. The results of such an analysis will not be made available to third parties (third parties do not include SMT's parent companies and/or subsidiaries). This does not apply to figures and data regarding the use of the SaaS that are not directly traceable to the Client's use.
- 3.1.3 If the Client detects a malfunction, this must be reported immediately to SMT. After notification of a malfunction by the Client, SMT will take those measures that lead to or may possibly lead to recovery.
- 3.1.4 The costs of remedying malfunctions, including malfunctions that only hinder persons other than the Client, will be borne by the Client if it appears that the cause of the malfunction is the result of its improper use or is due to its acts or omissions in violation of the agreement. If SMT is of the opinion that there may be a possible danger to the functionality of computer systems or networks of SMT or third parties and/or to the network services, in particular caused by excessive e-mail traffic or other data, poorly secured systems or activities of viruses, Trojan software or similar software, SMT is entitled to take all necessary measures to prevent this danger. The costs of these measures, including the costs of informing the Client of the dangers, will be borne by the Client.

- 3.1.5 SMT will inform Client in advance of the intended Maintenance with regard to SaaS, if this Maintenance leads to problems with regard to gaining access to SaaS or the unavailability of SaaS. In that case, Maintenance will take place outside of Business Days. Other Maintenance will take place during Business Days.

#### 3.2 SMT SaaS Obligations

- 3.2.1 SMT takes care of the provision of the SaaS to the best of its ability.
- 3.2.2 Among other things, SMT does not guarantee that the telephone lines, the Internet and/or other networks offer optimal use and access.
- 3.2.3 SMT has no obligations with regard to availability, reliability or other performance requirements, such as request and response times, with regard to the Internet and/or other networks and the resulting facilities. This also applies to the delivered Customization, such as APIs, after the Warranty Period, as further indicated in article 3.10.1. SMT does not guarantee that it will always have access to the products of third parties and is not liable for the unavailability of those products, whether temporary or not.
- 3.2.4 SMT will strive to take all useful and necessary measures to ensure the proper functioning and continuity of the SaaS. SMT uses the most recent and most common virus protection programs in the market.
- 3.2.5 SMT will strive to provide sufficient physical and logical security against unauthorised access by third parties to the data used by SMT.
  - computer equipment and computer programs and/or stored Process Data in the context of the facility(s) agreed upon in the agreement. If the Client wishes to take specific security measures (for example, in view of the nature of the Process Data), the Client must explicitly submit this wish to SMT so that SMT can, if possible, make a proposal for the possible implementation thereof and the prices for this.
- 3.3 **Use of identification data**
- 3.3.1 SMT will only make Identification Data available to Client for the use of Products and Services. The Client will handle these Identification Data with care. In the event of loss, theft and/or other forms of unlawful use, the Client will notify SMT of this, so that the parties can take appropriate measures.
- 3.3.2 The Client bears all responsibility, liability and costs caused by the use of the Identification Data, used and/or disseminated by the Client. Under no circumstances shall SMT be liable for the misuse and/or unlawful use of the Identification Data.

- 3.3.3 The Client is not permitted to allow multiple persons to use the same Identification Codes without SMT's prior written consent. SMT may attach conditions to this permission.
- 3.3.4 If it can reasonably be suspected that misuse or unlawful use has been made of the Client's Identification Data, SMT may give the Client instructions that must be carried out.
- 3.3.5 If it is established that the Identification Data has been misused or that the Client has not complied with the instructions as referred to in Article 3.3.3, the Client will be in immediate default.
- 3.4 Changes to the SaaS**
- 3.4.1 SMT is entitled, after written notice with due observance of a reasonable period of time and without any compensation to be owed to the Client, to make additions and/or changes to the SaaS with regard to, but not limited to:
- a. access procedures, such as:
    - procedures relating to operational rules;
    - security requirements.
  - b. changing a third-party provider/supplier, location, hardware, software and other facilities that are important for the provision of the SaaS.
- 3.4.2 If the changes result in a demonstrable and such a large negative change in the working methods of the Client's company and/or the functionality of the SaaS, the Client may, after first having demonstrated the deterioration in writing, request SMT in writing to offer an alternative. If SMT does not offer a reasonable alternative, Client has the right to terminate the use of the SaaS by means of immediate termination, without SMT being obliged to pay any compensation in this respect or refund of monies already paid.
- 3.5 Client's data traffic**
- 3.5.1 SMT has no control over and/or insight into the content of the data traffic to and/or to the Client. SMT merely acts as a conduit. SMT does not guarantee the content of data in terms of, among other things, reliability and completeness.
- 3.5.2 The Client is responsible for the content of data traffic originating from the Client. Insofar as applicable, the code of conduct, as set out in Article 3.9, applies to the Client and its users.
- 3.5.3 The Client indemnifies and holds SMT indemnified against any form of claim, complaint or dispute by a third party in connection with (the content of) the data traffic or the information originating from the Client.
- 3.5.4 Contrary to the provisions of Article 8, Process Data remains the (intellectual) property of the Client. The Client grants SMT, free of charge, the perpetual right of use and processing of Process Data. Process data can only be made available to third parties if it cannot be directly traced back to the Client and has been brought into compliance with the obligations arising from the GDPR.
- 3.5.5 In principle, process data will be stored for a maximum period of 3 (three) years as long as the agreement continues. After the end of the agreement, SMT is not obliged to retain Process Data.
- 3.5.6 SMT will cooperate in the transfer of Process Data and/or other data to another application if requested by the Client. SMT never guarantees that the existing Process Data and/or other data can be transferred to another application during the agreement and/or after the end of the agreement.
- 3.5.7 All costs associated with the transfer of Process Data and/or other data at the Client's request to another application shall be fully borne by the Client.
- 3.6 Obligations of the Client SaaS**
- 3.6.1 If the SaaS concerns, among other things, the hosting of a website of the Client and/or for the benefit of the Client, the Client must have a domain name, issued and registered by an authorised institution, in accordance with the General Terms and Conditions for Third Parties used by the institution in question. The Client indemnifies and holds SMT harmless against any form of claim, complaint or dispute in connection with (the use of) the domain name on behalf of or by the Client.
- 3.6.2 If personal data and/or other data/data are transported by means of SaaS or commercial and/or other activities are carried out by means of the SaaS, Client indemnifies SMT against all liability, costs or damage as a result of claims by third parties in the event that this personal data and/or other data/data are exported or commercial and/or other activities are carried out in violation of the relevant (privacy) legislation and/or other legislation in this area.
- 3.6.3 The Client will immediately inform SMT in writing of any changes that are relevant to the proper execution of the SaaS.
- 3.6.4 The Client will comply with SMT's instructions regarding Fair Use. If the Client does not comply with the instructions given by SMT, SMT is authorised to use technical means to reduce the load caused by the Client or to stop making the SaaS available to the Client in the event of persistent excessive load. SMT will never be liable for damage of any nature whatsoever suffered by Client or third parties as a result of the measures taken by SMT and/or third parties.

- 3.6.5 The Client will not adjust the header and footer of the SMT Products and Services and will also impose this obligation on its customers.
- 3.7 Personal data**
- 3.7.1 If the Client is to be regarded as a controller within the meaning of the General Data Protection Regulation (GDPR) and SMT is to be regarded as a processor within the meaning of the GDPR on behalf of the Client, the provisions of Article 3.7 shall apply.
- 3.7.2 The Client acknowledges that the data processing as instructed to SMT is lawful. The Client also acknowledges that it has ensured that SMT offers appropriate technical and organisational measures as referred to in Article 28 paragraph 1 of the GDPR, including measures shall be means security measures as referred to in Article 32 of the GDPR. The Client indemnifies SMT against all claims for invasion of privacy related to the foregoing.
- 3.7.3 Insofar as the Client is entitled to do so, the Client expressly agrees to the inclusion of (personal) data of users in SMT's personal registration for the purposes of administration and management. This personal data collection contains, among other things, Identification Data and Process Data and is only accessible to SMT. This data will not be provided to third parties within the meaning of the GDPR, except in cases where SMT is obliged to do so by law or a court order.
- 3.7.4 The Client must at all times ensure that the Client and its customers comply with the applicable laws and regulations. Also with regard to GDPR.
- 3.8 Client Research, Identity Verification, Identity Verification**
- 3.8.1 The Client shall use Products and Services at its own expense and risk for the purposes of identity verification and/or identification of natural persons.
- 3.8.2 The Client acknowledges that Scope has adequately warned the Client regarding the lawfulness of the Client's instructions to Scope.
- 3.8.3 If the Client makes use of the Products and Services offered by Scope. Including Third Party Products and Services to check the authenticity and validity of proof of identity of natural persons, such as passport, ID card or driver's license, the Client guarantees to Scope that taking cognizance of such (personal) data and having such (personal) data processed is lawful for the Client.
- 3.8.4 The Client shall not keep copies of proof of identity of natural persons, such as passport, ID card or driver's license, longer than necessary for the purposes for which those copies were made and shall always observe the applicable statutory retention periods.
- 3.8.5 The Client guarantees to Scope that a natural person has given explicit permission to use iDenfy or a similar automated means of verification. The Client will never directly or indirectly force a natural person to submit to an automated form of identity verification. The Client will ensure that

automated decision-making, including profiling. The Client shall take appropriate measures to protect the rights and freedoms and legitimate interests of the data subject, including at least the right to human rights. Intervention from the controller, the right to express his or her point of view and the right to challenge the decision based on automated processing. The Client shall inform the natural person concisely, transparently, comprehensibly, in an easily accessible form and in clear and simple language about the foregoing.

**3.9 Code of conduct**

- 3.9.1 The Client and its customers must make responsible use of SaaS and/or the other facilities offered. It is forbidden to use SaaS and/or the other facilities offered in such a way that:
- damage may occur in the systems of SMT and/or third parties;
  - disruptions in use may occur.
- 3.9.2 The Client shall ensure that such damage and/or disruptions are not the result of misconfiguration on its part.
- 3.9.3 It is forbidden to use SaaS and/or other facilities offered for illegal practices and/or in violation of the agreement. This includes, but is not limited to, the following acts and behaviours:
- infringe the rights of third parties or enable the infringement of the rights of third parties, such as but not limited to intellectual property rights and privacy rights;
  - failure to comply with applicable legislation and/or other relevant regulations;
  - spamming (the unsolicited distribution (or currently possible for third parties) of advertising messages and other communications);
  - the storage/distribution of (child) pornography;
  - causing danger to the functioning of computer systems or networks of SMT or third parties and/or to the services via the network, in particular caused by the sending of excessive e-mails or other data, poorly secured systems or activities of viruses, Trojan horses or similar software.

ensure that natural persons are offered a realistic option to carry out identity verification without the intervention of automated means, for example at an office location of the Client in the presence of a human employee of the Client.

- 3.8.6 Under no circumstances shall the Client use the Products and Services, including Third Party Products and Services, to subject a natural person to exclusively

- f. sexual harassment, discrimination and/or other harassment of individuals;
- g. distribute or otherwise make available to third parties obscene, offensive and harassing material and/or other material of a similar nature;
- h. Threats;
- i. storage and distribution of viruses, worms and/or other destructive activities;
- j. unauthorized intrusion (hacking) of third-party accounts, systems and/or networks and/or SMT and/or performing and/or refraining from performing and/or refraining from any other act that makes hacking possible.

- 3.9.4 SMT reserves the right, at its own discretion, if required to do so by law or court decision and/or if a third party points out and/or suspects SMT that the rights of a third party are being infringed by means of the SaaS, it acts in violation of what is stipulated in the SMT General Terms and Conditions and/or the agreement and the obligations arising therefrom, are not properly or completely complied with, to discontinue the use of the SaaS and/or the other facilities offered, to delete the relevant information and/or to suspend its obligations, this until the obligations have been fulfilled.
- 3.9.5 SMT and/or third parties will never be liable for damage of any kind suffered by Client and/or third parties as a result of the damage suffered on the basis of article 3.8.4. measures taken by and/or for the benefit of SMT. The obligations to pay the agreed amounts shall remain for the duration of the period referred to in Article 3.8.3. measures taken by and/or for the benefit of SMT shall apply in full.
- 3.9.6 If the seriousness of the Client's actions and/or inactions justifies this and/or they are continued despite the measures taken by and/or for the benefit of SMT, as set out in Article 3.8.4., SMT shall, in accordance with Article 1.5.4. the right to dissolve the agreement, without SMT being obliged to pay any compensation in this respect or to refund any monies already paid.

#### **4 TRAINING**

- 4.1 Entry**
- 4.1.1 Registration for participation in a Training must be made no later than 2 (two) weeks before the start of the Training. If the desired Training is fully booked, an announcement will be made.
- 4.1.2 Immediately upon receipt of the registration, SMT will send a written confirmation of the Training planned for the Client. For registrations that have been made orally, the order confirmation is deemed to reflect the registration correctly and completely, unless objection is made in writing within 3 (three) Business Days.
- 4.1.3 Training courses will be provided at the then-current Training Rates. SMT is entitled to charge the costs incurred by SMT for, among other things, the rental of the Training Room, the teaching materials, etc.

#### **4.2 Cancellation**

- 4.2.1 SMT reserves the right to cancel a Training due to lack of the required number of registrations. In principle, the Client will receive a notification of such cancellation no later than 1 (one) week before the start of the Training. Any Training Fees already paid will be refunded. Client may decide to participate in the Training at a higher Training Price. This will be discussed in consultation.
- 4.2.2 Cancellation by Client is free of charge up to 4 (four) weeks before the start of the Training, after which 50% of the Training Costs due will be charged. If Client cancels 1 (one) week or less before the start of the Training, or after the start of the Training, SMT reserves the right to charge 100% of the Training Costs due.

#### **4.3 Execution**

- 4.3.1 SMT will make every effort to provide the Training in accordance with the published schedule, but does not accept any liability if a Training cannot take place or has to be interrupted due to special circumstances. In such a case, SMT will make reasonable efforts to provide or complete the Training at a later date. If this proves not to be possible, Training Fees already paid will be refunded pro rata.

#### **4.4 Private Trainings**

- 4.4.1 Private Training Courses are Trainings provided for the Client, in which the Client participates exclusively. Also known as customer training. Private Training courses can be provided both at SMT's location and at the Client's location. Private Trainings are divided into:

- a) Customer standard training: a standard SMT training;
- b) Customer Tailor-made Training: a Training that is adapted to the Client's situation.

- 4.4.2 Rates for private Trainings depend on the number of participants. If it turns out afterwards that more or less participants have registered or participated than was assumed in the offer, SMT has the right to increase or decrease the Training Day price.

- 4.4.3 If private Training courses are given at the Client's location, the Client must also provide the necessary facilities and space in accordance with Article 1.6.51.6.5.

#### **4.5 Refusal of participant**

- 4.5.1 SMT reserves the right to refuse access to the Training to a participant:
  - a. if amounts due have not yet been paid in full and/or on time before the start of the Training;
  - b. competition considerations or other reasonable grounds for SMT.

#### **5 THIRD PARTY PRODUCTS**

##### **5.1 Third Party Products and Services**

- 5.1.1 SMT is entitled to provide Third Parties with Products and Services or to involve Third Parties Products and Services in the fulfilment of its obligations arising from the agreement. SMT is not responsible for Third Party Products and Services, unless otherwise agreed in writing.
- 5.1.2 If SMT supplies Third Party Products and Services to the Client, then in addition to these SMT General Terms and Conditions, the Third Party General Terms and Conditions also apply to the agreement.
- 5.1.3 SMT grants rights to Third Party Products and Services under the conditions as described in the General Terms and Conditions for Third Parties.
- 5.1.4 SMT does not perform Maintenance, Support or other services with respect to Third Party Products and Services, unless otherwise agreed in writing.
- 5.1.5 With regard to Third Party Products and Services that have been delivered or delivered to them, SMT provides:
  - a. The service on Third Party Products and Services, subject to up to the same terms and conditions set out in the Third Party Terms and Conditions.
  - b. The warranty for the term and under a maximum of the same conditions as set out in the General Terms and Conditions for Third Parties.
- 5.1.6 Repairs of Third Party Products and Services:
  - a. Under no circumstances will the Third Party Products and Services delivered be replaced, unless the Client expressly requests this and pays the associated costs as an advance.
  - b. All repairs are subject to a handling fee. If repairs are carried out elsewhere than at SMT, call-out charges, hourly wages and other associated costs will also be charged.

**5.2 General Terms and Conditions Third Parties**

- 5.2.1 Third parties who are declared applicable in these SMT Terms and Conditions will, if available from SMT, be sent upon request. The General Terms and Conditions for Third Parties will be made available in the same format and language as received by SMT.
- 5.2.2 The SMT General Terms and Conditions take precedence over the Third Party General Terms and Conditions, unless otherwise indicated. In the event of a conflict between the SMT General Terms and Conditions and the Third Party General Terms and Conditions, SMT may declare the relevant conflicting provisions in the Third Party General Terms and Conditions inapplicable or declare them applicable.

**6 (AF/OP) DELIVERY**

- 6.1.1 In the cost estimate for the project, which SMT in principle includes in a Feasibility Study, the aim is to achieve the best possible hours and cost estimate, which is based on the project's known and estimated size, wishes and costs at that time. No rights can be derived by the Client from this estimate of hours and costs. The actual costs will be charged to the Client at all times on the basis of subsequent calculation based on actual time spent.

**6.2 (Delivery) time**

- 6.2.1 All (delivery) deadlines that may be mentioned by SMT and applicable to SMT have been determined to the best of our knowledge on the basis of the information that has been made known to SMT and will be observed as much as possible.
- 6.2.2 (Delivery) deadlines are therefore not considered as strict deadlines within which deliveries must be made, but as periods within which SMT will strive to do its best to deliver what has been agreed upon. If there is a possibility that any term will be exceeded, SMT and Client will consult about a new term as soon as possible.
- 6.2.3 The fact that SMT exceeds any applicable (delivery) period never constitutes an attributable shortcoming on the part of SMT. SMT does not accept liability under any circumstances if a (delivery) term is exceeded.

**6.3 Proviso**

- 6.3.1 SMT only undertakes to execute the agreement concluded between SMT and the Client after a signed copy of the agreement drawn up by SMT has been received by SMT and/or if all fees due have been paid in full and on time. If SMT commences the performance of the agreement prior to receipt of a signed copy of the agreement and/or all fees due have been paid in full and on time, SMT reserves the right to suspend the performance of the agreement until a signed copy of the agreement has been received and/or all fees due have been paid in full and on time.
- 6.3.2 Rights, such as, but not limited to, the (possible transfer) of ownership of Products and Services, are granted to the Client under the suspensive condition that the Client pays the agreed fees in full and in a timely manner. In the event of non-payment, Client must return the Products and Services to SMT at its own expense within one week, after being instructed to do so by SMT. All other remedies remain applicable.
- 6.3.3 If the Client forms a new product from Products and Services delivered by SMT, the Client will do the forming of the new product for SMT and the Client will keep the new product for SMT until the Client has paid all amounts due under the agreement in full and on time. SMT retains all rights as the owner of the new product until such time as payment in full and on time by the Client.

**6.4 Risk**

- 6.4.1 The Product is at the risk of the Client from the (ex-)delivery, even if the ownership or right of use has not yet been transferred. Therefore, the Client remains liable for the (purchase) price, regardless of the destruction or deterioration of the Product due to a cause that cannot be attributed to SMT.

6.4.2 The same applies from the moment at which the Client is in default of performing an act with which the Client must cooperate in the delivery.

#### **6.5 Trial License**

6.5.1 SMT is entitled, at its own discretion, to grant Client a trial license to the Products and Services. A trial license is only applicable if confirmed in writing by SMT.

6.5.2 Unless otherwise agreed, the trial license will have a duration of 30 (thirty) days starting at the time of delivery.

6.5.3 During the trial license, SMT is not subject to any obligations and/or responsibilities. The use of the Products and Services during the trial license is solely at the risk and expense of the Client.

6.5.4 In the event that the Client does not wish to purchase the Products and Services, the Client is obliged:

- a. remove the Products and Services from the systems on which they are installed;
- b. delete/destroy backups and/or other possible copies of the Products and Services; and
- c. ensure that the Products and Services are in SMT's possession within 7 (seven) days after the end of the evaluation period. The Client bears the costs and risk for the (timely) return of the Products and Services to SMT.

6.5.5 The Client agrees that in the event of a violation of Article 6.5.4, SMT will be entitled, without further notice of default, to charge Client the license prices and/or other prices applicable at that time, if the Product is purchased after the end of the evaluation period, without prejudice to SMT's right to claim full compensation for the damage suffered by SMT.

6.5.6 Data generated by the Client during the evaluation period remains the property of the Client. It is the sole responsibility of the Client to make a backup of data and/or to transfer it to an alternative system before termination of the use of the Products and Services takes place. SMT has no obligation whatsoever with regard to the aforementioned data during the evaluation period or thereafter.

#### **6.6 (af/af)delivery, Installation and Acceptance procedure**

6.6.1 SMT will deliver the Products and Services to the Client in accordance with the specifications laid down in writing by SMT and, if desired by the Client, install them.

6.6.2 (af/off) delivery of Products and Services takes place by making the Products and Services available to the Client at the location of SMT's warehouse or a Data Center. The costs of transport and any insurance are at the expense of the Client. The choice of the mode of transport is determined by SMT and insurance of the Products and Services to be transported is not provided by SMT, unless otherwise agreed in writing.

6.6.3 Supply, by or by means of SMT, of services takes place at the place(s) and at the times when the services are performed.

6.6.4 Only in the case where installation takes place by SMT, an acceptance period will apply immediately upon completion of the installation. The acceptance period for the Client is 14 (fourteen) days after completion of the installation. During the acceptance period, the Client is not permitted to use the Products and Services for productive and/or operational purposes.

6.6.5 The Products and Services shall be deemed to have been accepted between the parties:

- a. at the time of delivery if no acceptance period applies, or
- b. if an acceptance period applies, on the first day after the acceptance period, or
- c. if SMT receives a Test Report (Article 6.7) before the end of the acceptance period : At the time that the Errors referred to in that Test Report (Article 6.8) have been corrected, without prejudice to the presence of minor Errors that do not preclude acceptance according to Article 6.8.4.

6.6.6 If the Products and Services are delivered and tested in phases and/or parts, the non-acceptance of a particular phase and/or component shall not affect any acceptance of an earlier phase and/or any other component.

6.6.7 Contrary to the foregoing, if the Client makes any use thereof for productive or operational purposes before the moment of acceptance, the Products and Services will already be deemed to have been fully accepted from the start of that use.

#### **6.7 Review**

6.7.1 If, during the acceptance period, it appears that the Products and Services contain Errors, as described in article 6.8, that impede the progress of the acceptance test, Client will inform SMT about the Errors by means of a written and detailed Test Report no later than the last day of the acceptance period, in which case the remaining acceptance period will be interrupted until the Product has been adjusted in such a way that the Errors have been corrected.

#### **6.8 Errors**

- 6.8.1 Error(s) is understood to mean failure to comply with the functional specifications established by SMT in writing and, in the case of the development of customized SMT Products and Services, with the explicitly agreed functional specifications in writing. An Error only exists if it can be demonstrated and reproduced. The Client is obliged to report any Errors to SMT without delay.
- 6.8.2 Any right to rectification of Errors lapses if the Products and Services provided have been changed by the Client in any form or in any way whatsoever.
- 6.8.3 Correction of Errors will take place at a location designated by SMT. SMT is entitled to implement temporary solutions, emergency solutions, detours and/or other problem mitigation measures.
- 6.8.4 Acceptance of the Products and Services may not be withheld on grounds other than those relating to the specifications expressly agreed between the parties and furthermore not because of the existence of minor Errors that do not reasonably prevent the operational or productive commissioning of the Products and Services.

**6.9 Change of performance**

- 6.9.1 SMT may deliver other Products and Services instead of the Products and Services ordered by the Client, provided that the operation and capacity do not deviate substantially from the originally ordered.
- 6.9.2 If the agreement has been entered into with a view to execution by a specific person, SMT will always be entitled to replace this person with one or more other persons with the same or similar qualifications.

**6.10 Guarantee**

- 6.10.1 Warranty is only provided on Customization.
- 6.10.2 During a period of 3 (three) months (Warranty Period), commencing at the moment of acceptance (if this moment is unclear, the date on which the agreement for the Customization was entered into) applies, SMT will strive to rectify Errors to the best of its knowledge and ability, provided that Client informs SMT about the Errors by means of a written and detailed report within the Warranty Period. At its sole discretion, SMT is entitled to repair, modify or replace the Products and Services.
- 6.10.3 SMT is entitled to charge the usual prices and costs for repair, modifications or replacement of the Products and Services if Errors can be regarded as errors in a general sense on the part of the Client, are the result of careless or improper use or other causes that are not attributable to SMT or if the Client could reasonably have discovered the Error during the acceptance period.

- 6.10.4 Warranty does not cover the reconstruction and/or recovery of damaged or lost files and/or data. SMT does not guarantee that the Products and Services will function without interruptions or Errors, are suitable for any use intended by Client and/or will lead to the result desired by Client during the Warranty Period and thereafter. Any right to Warranty lapses if the Client changes the Products and Services or causes them to be changed without the written consent of SMT, as required in Article 2.2.4
- 6.10.5 After the end of the Warranty Period, SMT will not be obliged to correct Errors, change and/or replace Products and Services, unless otherwise agreed.
- 6.10.6 The Warranty given on Third Party Products and Services is in any case limited to the General Terms and Conditions Third Parties used by the suppliers of Third Party Products and Services, as stated in Article 5.

**7**

**PRICES/PAYMENTS**

**7.1**

**Pricing and Payments**

**7.1.1**

All prices are exclusive of VAT and exclusive of any other levies imposed by the government. The amounts due will be charged including VAT and any government levies.

**7.1.2**

SMT will charge the amounts owed by the Client to the Client on a monthly and/or within another period specified in the agreement. The Client shall pay the amounts due within 30 days (thirty) days of the invoice date without being entitled to compensation, set-off or suspension for any reason whatsoever. Objections to the invoice must be notified to SMT in writing and with good arguments within 30 calendar days of the invoice date. In the event of a dispute regarding (part of) the invoice, the Client is not obliged to pay that part of the fee and/or the costs for which there is no agreement between the parties. As far as the undisputed part is concerned, it must be paid in the manner and within the period described in this paragraph.



- 7.1.3 If the Client fails to comply with any payment obligation, the Client will be in default without any further demand or notice of default being required. The Client owes SMT the costs (including costs due for legal assistance provided by a lawyer or authorised representative), both in and out of court with regard to the collection of all that the Client owes to SMT. Extrajudicial collection costs amount to 15% of the amount due with a minimum of € 175 (one hundred and seventy-five euros). In any case, monthly interest with a percentage equal to the statutory commercial interest plus 3 (expressed in %) will be charged on the amount owed by the Client from the date on which the Client is in default.
- 7.1.4 SMT has the right to suspend its activities and other obligations until full payment has been made, without prejudice to the Client's obligation to comply with its obligations.
- 7.1.5 If SMT is unable to deliver as a result of an omission on the part of the Client, SMT is entitled to charge a monthly interest fee of 1.5% on the amount due.
- 7.1.6 The fee for Support and any other annual or periodic fees are due as an advance at the time of the conclusion of the agreement between the parties and will be charged to the Client in a duly specified manner prior to each new year or any other period that the agreement between the parties continues, unless the parties expressly agree otherwise.
- 7.1.7 The amount due in clause 7.1.1 may be increased by any order costs, shipping costs and third party costs. An increase can also take place if work on behalf of the Client takes place outside SMT's office. For work outside SMT's office, hourly wages, travel and waiting time allowances, travel and/or mileage allowances, hotel costs and any other costs associated with such work will be charged. The travel and waiting time allowance amounts to 50% of the hourly wage applicable at that time. The mode of transport is determined by SMT. The foregoing also applies to activities that will take place outside the Netherlands.
- 7.1.8 The above provisions do not affect other SMT rights on the grounds of failure to comply by the Client.
- 7.2 Price changes**

- 7.2.1 The prices agreed between SMT and the Client are based, among other things, on the costs of electricity, salaries, social security contributions, materials, travel and accommodation costs, etc., as well as the exchange rate between the currencies used, as it applies at the time of conclusion of the agreement. SMT is entitled to adjust the prices to these change(s) in the event of a change in one or more cost items (including Third Party Products and Services) and/or a change in the exchange rate, a change in the Consumer Price Indices (CPI) or the Service Price Index (DPI) J Information and Communication. SMT will increase its prices at least annually, on 1 January, based on the figures of the Service Price Index (DPI) J Information and Communication published by CBS on 1 January (possibly based on third quarter figures). Changes may be rounded up to a multiple of € 2.50.
- 7.2.2 SMT will offer the Client the opportunity to take note of any price changes. If the Client does not agree to a price change, the Client is only entitled to terminate the agreement by giving notice with effect from the date on which the price change will take effect, if and as long as the total price increase for 1 (one) year exceeds the inflation rate published by CBS for the current year (or the previous year for price increases announced for the following year) by more than 10 points (expressed in %) by more than 10 points.
- 7.3 Supplement price and payment**  
Insofar as this is not deviated from in Article 7.2, the provisions of Article 7.1 above shall continue to apply.
- 7.4 Fixed Price**
- 7.4.1 With a Fixed Price agreement, the work is carried out for a pre-agreed amount.
- 7.4.2 Unless SMT can invoke article 1.6.4, additional hours, insofar as a Fixed Price agreement has been made, will not be charged.
- 7.5 Post-calculation**
- 7.5.1 If settlement will take place on the basis of subsequent calculation, this means that, before SMT starts the agreed work, a global estimate can be made of the expected costs. At the end of the work to be carried out, all costs actually incurred in connection with the work will be charged. The Client is therefore aware that there is a possibility that the previously determined estimate may be lower than the actual costs incurred. If no method of settlement has been agreed in advance, work will be carried out on the basis of subsequent calculation.
- 7.6 Advance**

7.6.1 SMT is entitled to charge an advance. If full payment of the advance payment is not made, SMT is entitled, without prejudice to its other rights, to immediately suspend the further execution of the agreement and all that Client owes to SMT for whatever reason is immediately due and payable.

**8 INTELLECTUAL PROPERTY RIGHTS**

- 8.1 **Rights of SMT and Client**
- 8.1.1 SMT has the exclusive right to further develop the SMT Products and Services and to make the use thereof available to third parties by means of licenses.
- 8.1.2 Except in the case of Third Party Products and Services, for each assignment SMT will continue to be carried out wherever and whenever, regardless of whether it concerns the (af/on) delivery of an existing Product or a Product yet to be developed, all resulting intellectual property rights, industrial property rights and other rights are vested in SMT.
- 8.1.3 The Client acknowledges that all current and future intellectual property rights, industrial property rights, other rights and the registration and/or application of the aforementioned rights and/or similar rights for the entire term and any extensions or renewals thereto will now or in the future accrue to SMT in perpetuity worldwide or will be transferred.
- 8.1.4 The Client is not permitted to remove or change any indication regarding intellectual property rights, industrial property rights, other rights, trademarks and trade names from the Products and Services, or to have such actions carried out by a third party.
- 8.1.5 The intellectual property rights, industrial property rights and other rights of a Product, or part thereof, can only be transferred to the Client by means of a written deed if SMT has these rights.
- 8.1.6 In the event that SMT, the Client or third parties make functional improvements or other changes to the Products and Services, the intellectual property rights, industrial property rights and other rights applicable to the improved or amended Products and Services will remain unchanged in SMT or the third party entitled party. If the aforementioned rights are not vested in SMT or a third party entitled party, the Client will arrange for the transfer of the aforementioned rights to SMT or the third party entitled party free of charge.
- 8.1.7 SMT reserves all intellectual property rights, industrial property rights and other rights with respect to Course Materials and/or documentation provided. The Client is expressly not permitted to reproduce this in any way, to hand it over to third parties or to lend it to third parties. The Client must ensure that its employees and/or third parties will comply with the aforementioned obligations.

**8.2 Protection**

- 8.2.1 SMT will indemnify the Client against any action insofar as it is based on the assertion that the SMT Products and Services infringe a copyright applicable in the Netherlands. SMT will irrevocably determine the decision cost and Damages awarded pay provided that the Client:
  - a. Inform SMT in writing about the claim immediately, but no later than within 10 (ten) days after the alleged copyright infringement has been brought to the Client's attention or that the Client could reasonably have become aware of it; and
  - b. the overall handling of the case, including settlement negotiations, to SMT.
- 8.2.2 If such an action is brought or the possibility exists, SMT reserves the right to acquire the license or sub-license right to the SMT Product or to modify the SMT Product in such a way that it no longer infringes a copyright valid in the Netherlands. If, in SMT's opinion, the foregoing possibilities are not reasonably eligible, SMT may take back the delivered SMT Product in return for payment only of the fee already paid for this SMT Product, less a reasonable fee for the use made of the SMT Product.
- 8.2.3 SMT will not indemnify Client against an action insofar as:
  - a. it is based on the assertion that the Third Party Products and Services delivered to the Client infringe an intellectual property valid in the Netherlands or elsewhere. ownership industrial property law or other right;
  - b. which is delivered or delivered by the Client as part of or in conjunction with a Product and this combination infringes an intellectual property valid in the Netherlands or elsewhere ownership industrial property law or other right;
  - c. The Client has made a change to or to the Product.
- 8.2.4 If it has been agreed between SMT and the Client that the intellectual property rights, industrial property rights or other rights of a Product or part thereof will be transferred to the Client, the Client will indemnify SMT against any action insofar as it is based on the assertion that the Product or part thereof infringes an intellectual property right, industrial property right or other right belonging to a third party.