

**GENERAL CONDITIONS OF ALL AFFILIATES BELONGING TO
TMC Group N.V.
(version 2009)**

Filed on **25 March 2009** with the Chamber of Commerce of Oost-Brabant in Eindhoven, the Netherlands, under number 17193178

Article 1 - General

- 1.1 The affiliates that are part of TMC Group N.V. (the 'member companies') are the users of these general conditions and will hereinafter be referred to jointly as 'TMC'. 'Member companies' means: all the affiliates over which the private limited company TMC Holding B.V. has either direct or indirect control and/or any company that is in some way associated with TMC Holding B.V.
- 1.2 'Services' means: all services provided to or on the premises of the Client subject to these general conditions by TMC, or at any rate by one or more of TMC's Employeneurs, pursuant to an Agreement.
- 1.3 'Client' means: any (legal) person to which TMC makes its offers and those (legal) persons which have contracted TMC or with which TMC has any legal relationship connected to the provision of Services.
- 1.4 'Contractual payment' means: the total amount set out in the Agreement (which also includes purchase orders and/or partial agreements) for the services to be provided by TMC or one of TMC's Employeneurs. The amount set out in the Agreement comprises the result of the fee for the Employeneur or Employeneurs and is calculated based on the hourly rate as stated in the Agreement. The Client owes the fee for the agreed project duration and any hours worked over and above the agreed project duration, as set out in the Agreement, plus VAT and the social security premiums payable in connection with the performance of the Agreement.
- 1.5 'Agreement' means: an agreement concluded between TMC and the Client, either based on an offer or tender made by TMC or otherwise, and either included in a purchase order or otherwise, pursuant to which TMC provides Services to the Client.
- 1.6 'Employeneur' means: any engineering and/or ICT professional who has a employment law relationship with TMC and who performs his or her professional services on behalf of TMC for a definite period for the benefit of one of TMC's Clients.
- 1.7 The headings of the individual articles contained in these general conditions only serve classification purposes. These headings should not be assigned any legal meaning.

Article 2 - Applicability

- 2.1 These general conditions apply to and are an integral part of all offers and tenders (including any schedules) made by TMC, all Agreements concluded with TMC (including any schedules) and all other legal relationships, including those to be concluded by TMC in the future.
- 2.2 TMC hereby emphatically rejects the applicability of any general conditions used by the Client to the Agreement and any further agreements to be concluded between TMC and the Client.

- 2.3 Deviations from and additions to these general conditions are only binding on TMC insofar as they have been agreed in writing.

Article 3 – Formation agreement

- 3.1 All tenders and offers made by TMC are without obligation.
- 3.2 If the acceptance by the Client deviates from the tender or offer, this will qualify as a new offer on the part of the Client and as a rejection of our tender or offer. Any such new offer must be expressly agreed in writing by TMC before it becomes binding on TMC.
- 3.3 TMC is only bound vis-à-vis the Client if it has accepted the contract in writing or if it has started performing the contract. The content of such underlying documents will be decisive in the determination of the extent to which TMC is bound.
- 3.4 Employees, also including Employeneurs, who do not have express written authorisation, are not authorised to enter into or conclude agreements on behalf of TMC. Oral undertakings or agreements made by or concluded with TMC employees or Employeneurs are binding on TMC only if they have been confirmed in writing to the Client by TMC.

Article 4 – The employeneur(s)

- 4.1 The individual Employeneur or Employeneurs to be deployed with the Client is/are selected by TMC after consultation between TMC and the Client.
- 4.2 Pursuant to its status as the employer of the Employeneurs, TMC is free to instruct them. Additionally, the Client is authorised to instruct the Employeneur or Employeneurs in relation to the daily activities on the Client's premises, and only to the extent that these instructions do not conflict with TMC's instructions. Furthermore, the Client is permitted to give the Employeneur or Employeneurs instructions in the context of employment conditions and safety.
- 4.3 If during a continuous period of at least 15 working days the Employeneur or Employeneurs are unable to perform the activities on the Client's premises due to illness, pregnancy, personal reasons or employment law sanctions, TMC is obliged to provide adequate replacement as soon as possible. In consultation with the Client, TMC may also opt to extend the duration of the project by a period that is at least equal to the number of working days during which the Employeneur or Employeneurs was/were unavailable.
- 4.4 The Client is prohibited from offering Employeneurs employment contracts or from employing them or allowing them to be employed other than through the intervention of TMC, unless after prior consultations in this context with TMC in which the parties have reached agreement about the conditions under which the Client will be permitted to employ the Employeneur or Employeneurs or to allow them to be employed. The above also applies to Employeneurs who have had an employment law relationship with TMC during a period of 12 months after termination of this employment law relationship.
- 4.5 The Client is not permitted to place any Employeneur or Employeneurs at the disposal of third parties and/or to allow them to work for third parties except with prior written approval from TMC.

- 4.6 Any breach of the provisions set out in paragraphs 4 and 5 of this article will incur an immediately due and payable penalty of € 50,000, without prejudice to any rights to which TMC is entitled including, but not limited to, full repayment of any losses incurred by TMC.
- 4.7 TMC is liable for losses arising from illegal acts committed by the Employeneur only if the losses which the Client or a third party incur are the result of grave errors on the part of the Employeneur or Employeneurs, to the extent this grave error was committed in the performance of the activities for the Client or a third party and only to the extent that the Client or the third party is able to demonstrate plausibly that it could not prevent the error referred to. In this context, the Client indemnifies TMC fully against third party claims to the extent that they extend beyond TMC's liability pursuant to the provisions in these general conditions.
- 4.8 The Client is obliged vis-à-vis TMC and its Employeneurs to comply with all national and international laws and regulations concerning employment conditions and safety, and to monitor compliance therewith and to comply absolutely and in full with the instructions of the Health and Safety Inspectorate or other regulations based thereon.
- 4.9 To the extent that TMC is sued by one or more of its Employeneurs for compensation of losses incurred in the performance of his or her activities for the Client or a third party, the Client is obliged to indemnify and hold harmless TMC against such liability.
- 4.10 The Client is obliged to compensate all losses incurred by TMC arising from the occupational disability or inability to work as well as the death of an Employeneur which arises from the employment conditions on the Client's premises at the time of the occupational accident, unless the Client is able to demonstrate that it has fully complied with the obligations as meant in Article 4.8 and that the losses arose from intentional or wilful reckless acts of the Employeneur. The Client will make available all reports concerning the employment conditions relevant to the occupational accident and/or which are related to the occupational accident involving an Employeneur within one (1) week of receipt thereof by TMC.

Article 5 - Delivery

- 5.1 The (start of the) delivery time of the Services to be provided by TMC is evident from the Agreement. In derogation from what is set out in the Agreement in this context, this delivery time does not start until TMC has at its disposal all the data, documents, equipment, computer time and (office) space to be provided by the Client to TMC needed for the correct performance of the agreements arising from the Agreement. Moreover, the delivery time does not start until any agreed advance payment has been received by TMC or until at TMC's request the Client has provided security for payment in favour of TMC.
- 5.2 The delivery times set out in the Agreement or stated by TMC are without obligation and are only approximations. Delivery times and/or dates stated must never be deemed to be strict deadlines unless agreed otherwise in writing. In the event of failure to deliver on time, TMC must therefore be given written notice of default, stating a reasonable term for performance. A reasonable term will in any case be a term considered reasonable in the industry.
- 5.3 Delivery times will be extended by the period by which the performance of the Agreement is delayed due to force majeure on the part of TMC. The delivery times will also be extended by the period by which the performance of any obligation on the part of the Client has been delayed and/or a period which TMC may reasonably set.

- 5.4 TMC is entitled to make partial deliveries. For the application of these general conditions, each partial delivery constitutes an independent delivery.
- 5.5 TMC is not liable for losses arising from delivery times and/or delivery dates being exceeded, unless in the event of wilful misconduct or gross negligence on the part of TMC. Failure by TMC for whatever reason to meet a delivery time will never entitle the Client to compensation or to cancel the Agreement or to non-performance of any obligation which may arise for it from this Agreement or any other agreement connected to it, nor to engage third parties to perform activities for the performance of the Agreement unless in the event of wilful misconduct or gross negligence on the part of TMC, or unless agreed otherwise in writing.
- 5.6 Any extension of the delivery time at the request of the Client is subject to written approval from TMC. Any costs or losses arising from such an extension for TMC are payable by the Client.

Article 6 - Payment

- 6.1 Unless expressly agreed otherwise in writing, payments will be made without any discount and/or settlement and/or deduction and/or setoff. Any claims under guarantee will not suspend the Client's payment obligation vis-à-vis TMC.
- 6.2 Payments must be made within a period of 30 days after the invoice date. TMC is entitled at all times to claim partial or full advance payment and/or to obtain security for payment.
- 6.3 The 30-day payment term set out in paragraph 2 of this article is a strict deadline. In the event of failure to pay within the term set out in paragraph 2, the client will owe TMC a contractual default interest per month or part of a month of 1.5% per month, starting on the due date of the invoice, whereby part of a month is calculated as a full month. Therefore, if payment is not made within the term set out in paragraph 2, the Client is deemed to be in default by operation of law and all amounts payable to TMC by the Client will become immediately payable without any demand or notice of default being required.
- 6.4 Payments must be made in euros, unless it has been agreed in writing that payments will be made in other currencies.
- 6.5 The Client is not entitled based on alleged defects in the Services performed or delivered by TMC and/or the incorrect performance of the contract or for any other reason to reject or suspend its payment obligation, unless the defect is recognised as such by TMC. In that case only is the Client entitled to suspend payment of no more than 15% of the Contractual Payment until the defect has been rectified.
- 6.6 Payments made by the Client will always first serve to settle all costs and interest owed and subsequently to settle the longest outstanding invoices payable, even if the Client states that the payment refers to a later invoice.
- 6.7 In the event of failure to pay within the term set out in paragraph 2 of this article, TMC will be entitled without further notice of default to charge the Client for all costs, both legal and extrajudicial, to the extent that this is not excluded by Book 2, Article 96(2)(c) of the Dutch Civil Code. Extrajudicial costs will be at least 15% of the (principal) amount payable.
- 6.8 Any complaints concerning a particular Service performed will not affect other Services and/or parts thereof belonging to the same Agreement. Moreover, any complaints will not affect the Client's payment obligation.

Article 7 – Liability

- 7.1 TMC will never be liable for compensation and therefore will never be obliged to compensate any losses or costs of any nature, whether direct or indirect, arising for the Client and/or third parties from any defects in the Services provided by TMC, late delivery of these Services or Services being lost, unless the Client demonstrates that the losses referred to above are due to wilful misconduct or gross negligence on the part of TMC or of an Employeeneur who has acted in accordance with our express instructions or if the losses arise from mandatory legal provisions concerning liability. The compensation to be paid by TMC will never exceed the amount that its insurer pays out in the relevant case.
- 7.2 TMC will never be liable for losses arising from wilful misconduct or gross negligence by its employees and/or non-employees for whom it is legally liable.
- 7.3 In the context of agreements based on the legal provisions concerning liability, in no event is TMC liable vis-à-vis the Client for losses incurred by the Client as a result of claims from third parties, its own employees included, in the context of losses of any nature caused by third party products used and/or delivered by TMC in the context of our business operations and/or the performance of the Agreement. On express written request TMC will reveal the identity of our supplier to an injured party.
- 7.4 In no event is TMC liable for business losses and/or consequential loss, including, but not limited to, loss of profits and loss of contract.
- 7.5 Any liability on the part of TMC is limited to a maximum of the amount paid out by its insurer in the relevant case.
- 7.6 The Client hereby indemnifies TMC against all claims of any losses caused in any way and any form for third parties directly or indirectly by or in connection with the Services performed, to the extent that they exceed TMC's liability vis-à-vis the Client pursuant to the provisions of these general conditions.
- 7.7 The Client hereby indemnifies TMC against all its claims and those of third parties caused by a defect in the Services performed and/or delivered which was partially caused by an action by the Client or its employees, including TMC's performance of the Services in accordance with the Client's instructions.
- 7.8 The Client hereby indemnifies and undertakes to hold harmless TMC against all costs and losses arising for TMC from third parties instituting proceedings against TMC based on any fact for which TMC is not liable pursuant to this provision and these general conditions. The costs of legal and other assistance incurred by TMC in relation to the claims for damages referred to above, such as resisting the claim, negotiations, etc., are deemed to amount to at least 15% of the compensation claimed and must be paid to TMC by the Client on TMC's demand, without prejudice to TMC's right to charge the costs actually incurred after itemisation.

Article 8 – Intellectual and industrial property rights

All intellectual and industrial property rights and/or database rights arising during or in connection with the performance of the Agreement are owned by the Client. TMC hereby assigns all intellectual and industrial property rights and/or database rights arising during or in connection with the performance of the Agreement to the Client in advance. To the extent required, TMC will cooperate at the Client's request in the assignment, creation and registration of the abovementioned rights.

Article 9 – Force majeure

- 9.1 TMC will never be liable for losses incurred by the Client if TMC is unable to fulfil the obligations arising from the Agreement, or unable to do so in time or correctly due to force majeure.
- 9.2 Force majeure will include in any case any circumstance which TMC at the time of the conclusion of the Agreement could not foresee and as a result of which the Client may not reasonably require normal performance of the Agreement, such as illness, war or the threat of war, civil war and rebellion, *molest* as defined in Article 3, paragraph 38 of the Financial Supervision Act (Wft), sabotage, power cuts, floods, earthquakes, fire, sit-down strikes, industrial action, exclusion of workers, revised government measures, transport problems, and other interruptions of our operations. Force majeure further includes the circumstance that the (supply) companies that TMC may be dependent upon for the performance of this Agreement fail to fulfil their contractual obligations vis-à-vis TMC, unless this is imputable to TMC.
- 9.3 In the event of force majeure, TMC is entitled to alter the delivery term and if delivery has become impossible or unreasonably onerous to cancel the Agreement with immediate effect without judicial intervention and without being obliged to pay compensation. Such a cancellation will take place by registered letter to the Client and/or by fax.
- 9.4 In the event that the force majeure should continue for more than three months, the Client is entitled to cancel the Agreement with immediate effect by registered letter.
- 9.5 If subsequent performance and/or delivery of Services incurs additional costs, these costs will be at the Client's expense.
- 9.6 After cancellation of the Agreement, TMC is entitled to reimbursement of the costs incurred by TMC or of the activities performed by TMC to the extent that the Client has benefited from them.

Article 10 – Confidentiality

The Client undertakes to treat confidentially all confidential information provided to it by TMC concerning the Services delivered or performed and all that is connected thereto reasonably, as well as concerning the individuals involved, also including the Employeneur or Employeneurs.

Article 11 – Termination of the Agreement

- 11.1 Without prejudice to the rights that otherwise accrue to TMC, if force majeure as referred to in Article 9 prevents TMC from performing the Agreement, TMC is entitled at its discretion to suspend or terminate the performance of the Agreement without judicial intervention and without TMC being obliged to pay compensation or provide any guarantee.

- 11.2 In the event:
- a. that the Client fails to fulfil any obligation arising from this Agreement or any other agreement concluded with TMC, fails do so on time or incorrectly;
 - b. of a bankruptcy, suspension of payments, cessation or winding-up of the Client's business, of an offer of a private debt restructuring settlement, if a liquidator is appointed in relation to the Client or a similar event affects the Client or a significant part of its capital in a country other than the Netherlands;
 - c. the Client is dissolved or discontinues its activities or a significant part thereof or a decision to that effect is made;
 - d. at any time the Client's business operations are relocated abroad partly or fully;
 - e. the Client merges with another company, is taken over fully or partially, is restructured or split up into separate legal persons or if the control of the Client or a significant part thereof is transferred to a third party in any other way, or a decision to that effect is made;
 - f. a change occurs among the persons authorised to determine the management and/or policy of the Client by virtue of their ownership of the voting shares, by virtue of an agreement or otherwise;
 - g. the Client has provided incorrect information, has neglected to provide information or has misled TMC in any way and TMC would not have concluded the Agreement or not on the same conditions if it had been aware of the correct, full and unambiguous information;

TMC will be entitled, without any notice of default and without judicial intervention, to terminate the Agreement fully or partly with immediate effect by registered letter to the Client, without TMC being obliged to provide any compensation or guarantee, but without prejudice to any further rights to which TMC is entitled. In these events, all TMC's claims on the Client are immediately due and payable.

- 11.3 During the performance of the Agreement, TMC is entitled to suspend the performance of its obligations until the Client has provided security at TMC's request and to its satisfaction for the performance of all its obligations arising from this Agreement.
- 11.4 Refusal by the Client to provide the requested security entitles TMC to terminate the Agreement without judicial intervention.
- 11.5 The Client undertakes to allow TMC on demand in writing full inspection of its creditworthiness as evidenced by documents prepared by a registered accountant, failing which TMC is entitled to terminate the Agreement without judicial intervention.
- 11.6 The Client's authority to terminate the Agreement and any Agreements arising from it is hereby expressly excluded.

Article 12 – Amendment of general conditions

TMC is authorised to amend these general conditions at any time. Such amendments take effect at the stated date of entry into force and are hereby accepted by the Client.

Article 13 – Contract takeover

- 13.1 TMC is entitled at any time to transfer its rights and/or obligations arising from this Agreement to a third party. The Client hereby in advance expressly pledges its irrevocable cooperation and consent to any transfer by TMC of its rights and/or obligations. 'Third party' means in this context: a party other than the contracting party, either part of TMC Group or otherwise.
- 13.2 Without prior written approval from TMC, the Client is not permitted to transfer its rights and/or obligations arising from this Agreement to a third party.

Article 14 - Invalidity

The invalidity or nullity of any provision in this Agreement and/or of these general conditions will not affect the other provisions in this Agreement or of these general conditions. Such an event will only invalidate or nullify the relevant provision.

Article 15 – Applicable law and settlement of disputes

- 15.1 All legal relationships including, but not limited to, the Agreements to which these general conditions apply partially or fully, are governed by Dutch law.
- 15.2 All disputes that may arise from an Agreement to which the present conditions apply either in full or in part, or that may arise from other Agreements or any other legal relationship in existence between TMC and the Client will be adjudicated by the competent court in 's-Hertogenbosch.

* The general conditions of TMC Group are available in Dutch and English. Should different interpretations arise, the Dutch language version always prevails.