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Article 1. Definitions

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

1. **Additional agreement**
An agreement in which the Consumer acquires products, digital content and/or services with respect to a distance agreement and these goods, digital content and/or services are delivered by the Supplier or a third party on the basis of an arrangement between this third party and the Supplier.
2. **Reflection period**
The period during which the Consumer may use his right of withdrawal.
3. **Consumer**
The natural or legal person who purchases products, (access to) digital content and or services from Suppliers at a distance and who does not act for purposes related to his/her commercial, trade, craft or professional activities.
4. **Day**
Calendar day.
5. **The software**
The computer programs specified in the agreement and made available to the consumer for use including the corresponding user documentation.
6. **Digital content**
Data produced and delivered in digital form.
7. **Continuing performance contract**
A contract serving to deliver goods, services and/or digital content in a given period.
8. **Sustainable data carrier**
Any means, including email, that allow the Consumer or the Supplier to store information directed to him/her personally in such a manner that makes future consultation and use possible during a period that matches the purpose for which the information is destined and which makes unaltered reproduction of the stored information possible.
9. **Right of withdrawal**
The Consumer's option not to proceed with the distance agreement within the cooling-off period.
10. **Supplier**
The natural or legal person who provides products, (access to) digital content and or services to Consumers at a distance.
11. **Distance contract**
A contract concluded by the Supplier and the Consumer within the scope of an organised system for distance selling products, digital content and/or services, whereby exclusive or additional use is made of one or more technologies of distance communication up to the conclusion of the contract.
12. **Standard form for withdrawal**
the European standard form for withdrawal included in Appendix 1.
13. **Technology for distance communication**
A means to be used for concluding an agreement without the Consumer and the Supplier being together in the same place at the same time.

Article 2. The Supplier's identity

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e-mail : info@hyperventilation.info
Chamber of Commerce : 58437401
VAT-identification number : NL098871511B02

Article 3. Applicability

1. These General Terms and Conditions apply to any offer from the Supplier and to any distance contract concluded by the Supplier and the Consumer.
2. Before concluding a distance contract, the Supplier shall make the text of these General Terms and Conditions available free of charge and as soon as possible. If this is reasonably impossible, the Supplier shall indicate in what way the General Terms and conditions can be inspected and that they will be sent free of charge if so requested, before the distant contract is concluded.
3. If the distance contract is concluded electronically, the text of these General Terms and Conditions, in deviation from the previous section and before the distance contract is concluded, may also be supplied to the Consumer electronically in such a way that the Consumer can easily store it on a long term data carrier. If this is reasonably impossible, it will be specified where the General Terms and Conditions can be viewed electronically and that they will be sent to at the Consumer's request free of charge via electronic means before concluding the distance contract.
4. Additions to or deviations from these general terms and condition shall only apply where agreed in writing between the parties.
5. The applicability of any of the Consumer's purchasing or other conditions is expressly rejected.
6. In the event that specific product or service condition does not apply or is deemed not applicable in addition to these General Terms and Conditions, the other articles remain applicable, and in the event of contradictory terms and conditions, the Consumer may always appeal to the applicable provision that is most favourable to him/her.

Article 4. The offer

1. All offers and other statements issued by the Supplier shall be subject to contract, except where specified otherwise in writing by the Supplier.
2. The Consumer shall guarantee the accuracy and completeness of the information that it submits to the Supplier and on which the Supplier bases its offer. The Consumer shall at all time exercise the greatest possible care to ensure that the requirements that the Supplier's services must meet are accurate and comprehensive. Measurements and information stated in drawings, pictures, catalogues, websites, quotations, advertising material, standard sheets etc. shall not have a binding effect on the Supplier, except where explicitly specified otherwise by the Supplier.
3. If an offer is of limited duration or if certain conditions apply, it shall be explicitly stated in the offer.
4. The offer contains a full and accurate description of the products, digital content and/or services offered. The description is suitably detailed to enable the Consumer to assess the products, or services and/or digital content adequately. If the Supplier makes use of pictures, they are truthful images of the products and/or services provided. Obvious errors or mistakes in the offer do not bind the Supplier.
5. All offers contain such information that it is clear to the Consumer what rights and obligations are attached to accepting the offer.

Article 5. The contract

1. Subject to the provisions in paragraph 4, the contract becomes valid when the Consumer has accepted the offer and fulfilled the terms and conditions set.
2. If the Consumer accepted the offer via electronic means, the Supplier shall promptly confirm receipt of having accepted the offer via electronic means. As long as the receipt of said acceptance has not been confirmed, the Consumer may repudiate the contract.
3. If the contract is concluded electronically, the Supplier will take appropriate technical and organisational security measures for the electronic data transfer and ensure a safe web environment. If the Consumer can pay electronically, the Supplier shall observe appropriate security measures.
4. The Supplier may, within the limits of the law, gather information about Consumer's ability to fulfil his payment obligations, and all facts and factors relevant to responsibly concluding the distance contract. If, acting on the results of this investigation, the Supplier has sound reasons for not concluding the contract, he is lawfully entitled to refuse an order or request supported by reasons, or to attach special terms to the implementation.
5. Before delivering the product, the Supplier shall send the following information along with the product, the service or the digital content in writing or in such manner that the Consumer can store it in an accessible manner on a long-term data carrier:
 - a. the visiting address of the Supplier's business establishment where the Consumer may get into contact with any complaints;
 - b. the conditions on which and the manner in which the Consumer may exercise the right of withdrawal, or, as the case may be, clear information about his being exempted from the right of withdrawal;
 - c. the information corresponding to existing after-sales services and guarantees;
 - d. the price including all taxes of the product, service or digital content, where applicable the delivery costs and the way of payment, delivery or implementation of the distance contract;
 - e. the requirements for cancelling the contract if the contract has a duration of more than one year or for an indefinite period of time.
 - f. the standard form for withdrawal if the Consumer has the right of withdrawal.
6. In case of a continuing performance contract, the stipulation in the previous paragraph only applies to the first delivery.

Article 6. Confidentiality

1. The Consumer and the Supplier shall ensure that all information received from the other party that is known or should reasonably be known to be of a confidential nature is kept secret. The party that receives such confidential information shall only use this information for the purpose for which it has been provided. Information shall in any event be regarded as confidential if it is designated as such by one of the parties.

Article 7. Privacy, data processing and protection

1. If the Supplier deems this to be necessary for the purpose of executing the agreement, the Consumer shall, upon request, notify the Supplier immediately in writing with regard to the manner in which the Consumer executes its obligations pursuant to legislation in respect of the protection of personal data.
2. The Consumer shall indemnify the Supplier against any claims by individuals whose personal data is recorded or processed within the context of a register of personal data maintained by the Consumer or for which the Consumer is responsible pursuant to the law or otherwise, unless the Consumer is able to demonstrate that the acts that form the basis of the claim are exclusively attributable to the Supplier.
3. Responsibility for the data processed using the service provided by the Supplier shall rest solely with the Consumer. The Consumer shall guarantee the Supplier that the content, the use and/or the processing of the data is not unlawful and does not infringe the rights of third parties. The Consumer shall indemnify

the Supplier against legal claims by third parties, of whatever nature, in relation to this data or the execution of the agreement.

4. If the agreement stipulates that the Supplier is obliged to provide some form of information security, this security shall meet the specifications in respect of security agreed between the parties in writing. The Supplier shall not guarantee that the information security will be effective under all circumstances. If the agreement does not include an explicit description of security measures, the security measures shall be of such a level that, having regard to the state of the art, the sensitivity of the data and the costs associated with the implementation of the security measures are not unreasonable.
5. If computer, data or telecommunications facilities are used during the execution of the agreement or otherwise, the Supplier shall be entitled to assign access or identification codes to the Consumer. The Supplier shall be entitled to change the access or identification codes assigned. The Consumer shall treat the access and identification codes as confidential and with due care and shall only disclose these codes to authorised members of staff. The Supplier shall under no circumstances be liable for any damage or costs arising from the use or misuse of access or identification codes, except where misuse was possible as a result of an act or omission on the part of the Supplier.

Article 8. Right of withdrawal

1. The Consumer can terminate an agreement for services or an agreement for delivery of digital content that is not delivered on a physical carrier without giving reasons during at least 14 days. The Supplier may ask the Consumer about the reason for the withdrawal but cannot force him to state his reason(s).
2. The reflection period referred to in Article 3 starts on the day following the conclusion of the agreement.

Extended reflection period for products, services and digital content that has not been delivered on a physical carrier in case no information is given about the right of withdrawal:

3. If the Supplier has not provided the Consumer with the legally required information about the right of withdrawal or has not provided the standard form for withdrawal, the reflection period expires twelve months after the end of the original reflection period in accordance with the reflection period determined in the previous sub-clauses of this Article.
4. If the Supplier provided the Consumer with the information referred to in the previous article within twelve months after the starting day of the original period of reflection, the period of reflection expires 14 days after the day on which the Consumer received the information.

Article 9. Consumer's obligations during the time of reflection

1. During this period, the Consumer shall handle the product with care. The Consumer shall only use the product to the extent necessary for establishing the nature, the characteristics and the effect of the product. The guiding principle is that the Consumer may only handle and inspect the product in the manner in which one is allowed to handle a product in a shop.
2. The Consumer is only liable for the decrease in value of the product that is caused by the way of handling the product which went further than allowed in sub-section 1.
3. The Consumer is not liable for the decrease in value of the product if the Supplier has not provided him with all legal information about the right of withdrawal before concluding the Agreement.

Article 10. Exercising the Consumer's right of withdrawal and the costs

1. If the Consumer exercises his right of withdrawal he shall notify the Supplier unambiguously with the standard form for withdrawal within the period of reflection.
2. The risk and the burden of proof for the correct and timely exercise of the right of withdrawal fall on the Consumer.
3. If the Consumer withdraws after having first explicitly requested that the performance of a service or the supply of gas, water or electricity having not been made ready for sale not be started in a limited volume

or given quantity during the period of reflection, the Consumer shall pay the Supplier an amount that is equal to the part of the obligation already performed at the time of withdrawal as compared with the full compliance of the obligation.

4. The Consumer does not bear the costs for performing services that had not been made ready for sale in a limited volume or quantity if
 - a. the Supplier has not provided the Consumer with the statutorily required information about the right of withdrawal, the compensation of costs in case of withdrawal or the standard form for withdrawal, or
 - b. if the Consumer has not explicitly requested that the performance of the service be started during the period of reflection.
5. The Consumer does not bear any cost for the full or partial delivery of digital content not stored on a physical carrier if
 - a. prior to the delivery, he has not explicitly consented to start performance of the agreement before the end of the period of reflection;
 - b. he did not acknowledge to lose his right of withdrawal when giving consent; or
 - c. the Supplier failed to confirm the Consumer's statement.
- d. If the Consumer exercises his right of withdrawal, all additional agreements end by operation of law.

Article 11. Supplier's obligations in case of withdrawal

1. If the Supplier makes the notification of withdrawal by electronic means possible, he shall promptly send a return receipt.
2. The Supplier shall reimburse all payments made by the Consumer, including any delivery costs that the Consumer may charge for the returned product, as soon as possible but within 14 days following the day on which the Consumer notified him of the withdrawal.
3. The Supplier shall make use of the same means of payment that the Consumer used, unless the Consumer consents to another method. The reimbursement is free of charge for the Consumer.

Article 12. The price and the payment

1. All prices are inclusive of turnover tax (VAT) and other government levies that have been or are later imposed. Except where agreed otherwise, all prices are in euros in all cases and the Consumer must effect all payments in euros.
2. The prices of the products and/or services provided shall not be raised during the validity period given in the offer, subject to changes in price due to changes in VAT rates.
3. If the Consumer consists of more than one natural and/or legal persons, each of these persons shall be joint and severally liable in respect of payment of the amounts due on the basis of the agreement.
4. The relevant documents and information from the Supplier's administration or systems shall be conclusive evidence of the service provided by the Supplier and the amounts payable by the Consumer in return for this service, without prejudice to the Consumer's right to submit evidence to the contrary.
5. If the Consumer is subject to a periodic payment obligation the Supplier shall be entitled to adjust the applicable prices and rates in writing subject to advance notice of at least three months. If the Consumer does not wish to agree to this change, the Consumer shall be entitled to terminate the agreement in writing with effect from the date on which the change is due to enter into force within thirty days following the date of notification. The Consumer shall not enjoy this right of termination, however, if the parties have agreed that the applicable prices and rates shall be adjusted subject to due observance of an index or other standard agreed between the parties.
6. All amounts relating to the service provided by the Supplier shall in each case be payable in advance each calendar month. The Consumer shall not be entitled to suspend any payments or to offset any amounts due.

7. If the Consumer fails to pay the amounts due or to pay the amounts due in a timely manner, statutory commercial interest shall be payable by the Consumer on the outstanding amount without a demand or notice of default being required. If the Consumer still fails to pay the amount owed after receiving a demand or notice of default, the Supplier may refer the debt for collection, in which case the Consumer shall also be obliged to pay all in-court and out-of-court expenses in addition to the total amount due, including all costs charged by external experts.
8. If an advance payment was agreed, the Consumer may not assert any right regarding the execution of the service(s) in question before making the agreed advance payment.
9. The Consumer has the duty to inform the Supplier promptly of possible inaccuracies in the payment details that were given or specified.

Article 13. Retention of title and rights, creation of items and suspension

1. All objects delivered to the Consumer shall remain the property of the Supplier.
2. The property law consequences of retention of title in respect of an item that is destined for export shall be governed by the law of the State of destination if this law incorporates provisions that are more favourable for the Supplier in this regard.
3. Rights, including rights of use, shall be granted to the Consumer or transferred, where appropriate, subject to the condition that the Consumer has paid all of the fees due pursuant to the agreement concluded between the parties in full. If the parties have agreed that the Consumer shall be subject to a periodic payment obligation in respect of the granting of a right of use, the Consumer shall be entitled to the right of use for as long as it continues to meet its periodic payment obligation.
4. The Supplier may retain any items, products, proprietary rights, data, documents, software, data files and (interim) results of the service provided by the Supplier received or created within the context of the agreement, contrary to an existing obligation to deliver or transfer these, until such time as the Consumer has paid all amounts due to the Supplier.

Article 14. Risk

1. The risk of loss, theft, misappropriation of or damage to items, products, data, documents, software, data files or data (codes, passwords, documentation etc.) produced or used within the context of the execution of the agreement, shall pass to the Consumer when the Consumer or one of the Consumer's agents comes into actual possession of them. In so far as these objects are in the actual possession of the Supplier or one of the Supplier's agents, the Supplier shall bear the risk of loss, theft, misappropriation or damage.

Article 15. Intellectual property rights

1. All intellectual property rights to the software, websites, data files, hardware or other materials such as analyses, designs, documentation, reports, quotations and related preliminary material developed or made available to the Consumer on the basis of the agreement shall remain exclusively vested in the Supplier, its licensors or its own suppliers. The Consumer shall only acquire those rights of use that are explicitly granted in these general terms and conditions and by law. Any rights of use granted to the Consumer shall be non-exclusive, non-transferable to third parties and non-sublicensable.
2. The Consumer shall not be permitted to remove or amend any details in relation to the confidential nature or in relation to copyrights, brand names, trade names or any other intellectual property right from the software, websites, data files, hardware or materials.
3. Even if the agreement does not explicitly provide for such authority, the Supplier shall be permitted to install technical provisions for the purpose of protecting the software, hardware, data files, websites and suchlike in relation to an agreed restriction on the content or the term of the right to use these objects. The Consumer shall under no circumstances be permitted to remove or circumvent such technical provisions or to arrange for this to be carried out.

4. The Supplier shall indemnify the Consumer against any legal claims from third parties based on the assertion that software, websites, data files, hardware or other materials developed by the Supplier itself infringe an intellectual property right of the third party in question, under the condition that the Consumer notifies the Supplier immediately in writing of the existence and content of the legal claim and leaves the disposal of the case, including any settlements effected, entirely to the Supplier. To this end, the Consumer shall provide the Supplier with the powers of attorney, information and cooperation that it requires in order to defend itself, where necessary in the name of the Consumer, against these legal claims. This obligation to indemnify shall not apply if the alleged infringement relates to (i) materials made available to the Supplier by the Consumer for the purpose of use, adaptation, processing or incorporation, or (ii) changes made by the Consumer, or by a third party on behalf of the Consumer, to the software, website, data files, hardware or other materials, without the Supplier's prior written consent. If it is irrevocably established in court that the software, websites, data files, hardware or other materials developed by the Supplier itself constitute an infringement of any intellectual property right vested in a third party or if the Supplier believes that there is a good chance that such an infringement may occur, the Supplier shall, where possible, ensure that the Consumer can continue to use the software, websites, data files, hardware or materials delivered, or functionally similar alternatives. All other or further-reaching obligations to indemnify on the part of the Supplier shall be excluded.
5. The Consumer warrants that no rights of third parties preclude the provision to the Supplier of software, hardware, material intended for websites (visual material, text, music, domain names, logos, hyperlinks etc.), data files or other materials, including draft materials, for the purpose of use, adaptation, installation or incorporation (e.g. in a website). The Consumer shall indemnify the Supplier against all claims by third parties based on the assertion that such provision, use, adaptation, installation or incorporation constitutes an infringement of any rights of the third party in question.

Article 16. Obligations to cooperate

1. The parties acknowledge that the success of activities in the field of information and communication technology generally depends on proper and timely mutual cooperation. In order to facilitate the proper execution of the agreement by the Supplier, the Consumer shall at all times provide the Supplier with all data or information that the Supplier deems to be useful, necessary and desirable and to give its full cooperation in a timely manner. If the Consumer deploys its own personnel and/or agents within the context of providing cooperation in the execution of the agreement, these personnel and agents shall have the necessary knowledge, expertise and experience.
2. The Consumer shall bear the risk of the selection, the use, the application and the management within its organisation of the software, hardware, websites, data files and other products and materials and of the services to be provided by the Supplier. The Consumer itself shall arrange for the correct installation, assembly and commissioning and for the application of the correct settings to the hardware, software, websites, data files and other products and materials.
3. If the Consumer fails to make the data, documents, hardware, software, materials or employees that the Supplier deems useful, necessary or desirable for the purpose of executing the agreement available to the Supplier, to make these available in good time or in accordance with the agreements, or if the Consumer fails to meet its obligations in any other way, the Supplier shall be entitled to suspend the execution of the agreement in part or in full and shall also be entitled to invoice the resulting costs in accordance with its standard rates, without prejudice to the Supplier's right to exercise any other statutory and/or agreed right.
4. If the Supplier's employees are carrying out activities on the Consumer's business premises, the Consumer shall ensure that any facilities reasonably requested by these employees, such as a workspace containing computer, data and telecommunication facilities, are provided free of charge. The workspace and facilities shall meet all statutory and other applicable requirements in relation to working conditions. The Consumer shall indemnify the Supplier against any claims by third parties, including the Supplier's employees, who suffer injury in connection with the execution of the agreement as a result of an act or omission on the part of the Consumer or of unsafe situations within the Consumer's organisation. The

Consumer shall notify the employees deployed by the Supplier of any applicable company rules or security rules prior to the commencement of the activities.

5. If use is made of computer, data or telecommunication facilities, including the internet, during the execution of the agreement, the Consumer shall be responsible for selecting the correct resources required for this purpose and for ensuring that these are available in full and in a timely manner, with the exception of those facilities that fall under the direct use and management of the Supplier. The Supplier shall under no circumstances be liable for losses or costs arising as a result of transmission errors, breakdowns or the non-availability of these facilities, unless the Consumer is able to demonstrate that these losses or costs are the result of intentional acts or deliberate recklessness on the part of the Supplier's management.

Article 17. Termination and cancellation of the agreement

1. Both of the parties shall only be authorised to rescind the agreement as a result of an attributable failure to perform this agreement if the other party, in all cases following written notice of default providing as many details as possible and setting a reasonable term in which the breach can be remedied, attributably fails to meet its fundamental obligations arising from this agreement. The Consumer's payment obligations and all other obligations to cooperate imposed on the Consumer or on a third party to be engaged by the Consumer shall in all cases be regarded as fundamental obligations arising from the agreement.
2. If the Consumer has already received services for the purpose of executing the agreement at the time of rescission as referred to in Article 17.1, these services and the related payment obligation cannot be revoked unless the Consumer is able to demonstrate that the Supplier is in default in respect of a substantial part of these services. Any amounts that the Supplier has invoiced before rescission in connection with work that it has already duly carried out or services that it has duly provided for the purpose of executing the agreement, shall remain due in full, subject to due observance of the provisions of the preceding sentence, and shall become immediately due and payable at the time of rescission.
3. If an agreement that by its nature and content is not brought to a close is entered into for an indefinite period of time, this may be terminated in writing by either party following consultation and stating reasons. If the parties have not agreed a notice period, a reasonable period of time must be observed on termination. The parties shall under no circumstances be obliged to pay any compensation as a result of termination of the agreement.
4. The Consumer shall under no circumstances be entitled to terminate an agreement regarding the provision of services that has been entered into for a fixed term before the end of the term.
5. Either of the parties shall be entitled to terminate the agreement in part or in full, with immediate effect, in writing without notice of default if the other party is granted a moratorium of payments, provisionally or otherwise, if a winding-up petition is filed in respect of the other party, if the other party's company is wound up or terminated for reasons other than reconstruction or the merger of companies, or if there is a change in the individual or board that has decisive control over the Consumer's company. The Supplier shall under no circumstances be obliged to reimburse any sums of money that have already been received or to pay any compensation in the event of such termination. If the Consumer becomes bankrupt or is liquidated, the right of use of the software, websites and suchlike made available to the Consumer shall terminate by operation of law.

Article 18. Liability of the Supplier

1. The total liability of the Supplier due to an attributable failure to perform this agreement or due to any other reason, explicitly including any failure to comply with a guarantee obligation agreed with the Consumer, shall be limited to compensation of the direct damage or loss not exceeding the sum stipulated for this agreement. This limitation of liability shall apply mutatis mutandis to the Supplier's obligation to indemnify referred to in Article 15.4 of these Terms and Conditions.

2. The liability of the Supplier for indirect damage or loss, resulting loss, loss of profit, loss of savings, reduced goodwill, loss due to business interruption, loss as a result of claims from the Consumer's customers, loss in connection with the use of items, materials or software provided by third parties that the Supplier is instructed to obtain by the Consumer and loss in connection with the engagement of secondary suppliers by the Supplier on the Consumer's instructions shall be excluded. The liability of the Supplier due to the scrambling, destruction or loss of data or documents shall also be excluded.
3. The exclusions and restrictions to the Supplier's liability, as described in the preceding paragraphs of Article 18, shall not affect the remaining exclusions and restrictions to the Supplier's liability set out in this Terms and Conditions in any way.
4. The exclusions and restrictions referred to in Article 18.1 to 18.3 shall no longer apply if and in so far as the loss is the result of intentional acts or deliberate recklessness on the part of the Supplier's management.
5. Except where performance by the Supplier is permanently impossible, the Supplier shall only be liable as a result of an attributable failure to perform an agreement if the Consumer gives the Supplier immediate notice of default in writing, setting a reasonable term in which the breach can be remedied, and the Supplier still attributable fails to meet its obligations after this period. The notice of default must contain as comprehensive and detailed a description of the breach as possible, in order to ensure that the Supplier has the opportunity to respond adequately.
6. A condition for the existence of any right to compensation shall in all cases be that the Consumer notifies the Supplier in writing of the loss or damage as soon as possible after it occurs. Any claims for damages against the Supplier shall expire by the mere passage of twenty four months from the date on which the claim arose.
7. The Consumer shall indemnify the Supplier against all claims by third parties due to product liability as a result of a fault in a product or system delivered by the Consumer to a third party and that partly consisted of hardware, software or other materials provided by the Supplier, unless and in so far as the Consumer is able to demonstrate that the damage or loss was caused by this hardware, software or other materials.
8. The provisions of this article and all other restrictions and exclusions of liability referred to in these general terms and conditions shall also apply in favour of all (legal) persons that the Supplier engages to execute the agreement.

Article 19. Force majeure

1. Neither of the parties shall be obliged to meet any obligations, including any guarantee obligation agreed between the parties, if it is prevented from doing so as a result of force majeure. Force majeure shall include: (i) a situation of force majeure encountered by the Supplier's own suppliers, (ii) failure by secondary suppliers engaged by the Supplier on the Consumer's instructions to duly meet their obligations, (iii) the defectiveness of items, hardware, software or materials provided by third parties that the Supplier has been instructed to use by the Consumer, (iv) government measures, (v) electricity failure, (vi) faults affecting the internet, computer network or telecommunication facilities, (vii) war, (viii) workload, (ix) strike action, (x) general transport problems and (xi) the unavailability of one or more members of staff.
2. If a situation of force majeure lasts for longer than ninety days, either of the parties shall be entitled to terminate the agreement in writing. The services already performed on the basis of the agreement shall in this case be settled on a pro rata basis, and the parties shall not owe one another any other amounts.

Article 20. Changes and additional work

1. If the Supplier has carried out work or performed other services that fall outside of the content or scope of the agreed work and/or services at the request or with the prior consent of the Consumer, such work or services shall be paid for by the Consumer in accordance with the agreed rates. If no rates have been agreed, the Supplier's standard rates shall apply. The Supplier shall under no circumstances be obliged to comply with such a request, and where it does comply, it may require the Consumer to enter into a separate written agreement for this purpose.
2. The Consumer accepts that work or services as referred to in this article may affect the agreed or anticipated time of completion of the services and the mutual responsibilities of the Consumer and the Supplier. The fact that (the demand for) additional work arises during the execution of the agreement shall under no circumstances constitute grounds for the Consumer to terminate or rescind the agreement.
3. In so far as a fixed price has been agreed in respect of the service, the Supplier shall, upon request, notify the Consumer in writing regarding the financial implications of the additional work or services as referred to in this Article.

Article 21. Transfer of rights and obligations

1. The Consumer shall not be entitled to sell and/or transfer the rights and/or obligations arising from the agreement to a third party.
2. The Supplier shall be entitled to transfer its rights to the payment of fees to a third party.

Article 22. Performance of an agreement and extra Guarantee

1. The Supplier guarantees that the products and/or services comply with the contract, with the specifications listed in the offer, with reasonable requirements of usability and/or reliability and with the existing statutory provisions and/or government regulations on the day the contract was concluded. If agreed, the Supplier also guarantees that the product is suitable for other than normal use.
2. An extra guarantee offered by the Supplier, his Supplier, Manufacturer or Importer shall never affect the rights and claims the Consumer may exercise against the Supplier about a failure in the fulfilment of the Supplier's obligations if the Supplier has failed in the fulfilment of his part of the agreement.
3. 'Extra guarantee' is taken to mean each obligation by the Supplier, his Supplier, Importer or Manufacturer in whom he assigns certain rights or claims to the Consumer that go further than he is legally required in case he fails in the compliance with his part of the agreement.

Article 23. Delivery dates

1. All delivery periods and delivery dates agreed or specified by the Supplier shall be established to the best of the Supplier's knowledge on the basis of the information available to it at the time of entering into the agreement. Interim delivery dates agreed between the parties or specified by the Supplier shall in all cases be target dates, shall not have a binding effect on the Supplier and shall in all cases be merely indicative. The Supplier shall make every reasonable effort to observe final delivery periods and final delivery dates wherever possible. The Supplier shall not be bound by a delivery period or delivery date, final or otherwise, that can no longer be achieved as a result of circumstances outside of the Supplier's control that occurred after the date on which the agreement was concluded. The Supplier shall also not be bound by a delivery date or delivery period, final or otherwise, if the parties have agreed on a change to the content or scope of the agreement (additional work, change in specifications etc.) or a change in the approach to the execution of the agreement. If there is a risk that a time period will be exceeded, the Supplier shall consult with the Consumer in order to discuss the implications of the overrun for the rest of the schedule.

2. The mere fact that a delivery period or delivery date, final or otherwise, specified by the Supplier or agreed between the parties has been exceeded, shall not mean that the Supplier is in default. In all cases – therefore also in the event that the parties have agreed a final delivery period or delivery date explicitly in writing - the Supplier shall not be in default as a result of the fact that a delivery period or date has been exceeded until such time as the Consumer has given written notice of default. The notice of default must contain as comprehensive and detailed a description of the breach as possible, in order to ensure that the Supplier has the opportunity to respond adequately.

Article 24. Delivery and execution

1. The Supplier shall exercise the best possible care when booking orders and executing product orders and when assessing requests for the provision of services.
2. The place of delivery is at the e-mail address given by the Consumer to the Supplier.
3. With due observance of the stipulations in Article 4 of these General Terms and Conditions, the Supplier shall execute accepted orders with convenient speed but at least within 30 days, unless another delivery period was agreed on. If the delivery has been delayed, or if an order cannot be filled or can be filled only partially, the Consumer shall be informed about this within one month after ordering. In such cases, the Consumer is entitled to repudiate the contract free of charge and with the right to possible compensation.
4. After repudiation in conformity with the preceding paragraph, the Supplier shall return the payment made by the Consumer promptly but at least within 30 days after repudiation.
5. The risk of loss and/or damage to products will be borne by the Supplier until the time of delivery to the Consumer or a representative appointed in advance and made known to the Consumer, unless explicitly agreed otherwise.

Article 25. Duration, termination and renewal

1. The provision of the software has been entered into for the term of 4 months. The agreement shall commence on the day on which the Consumer is provided with the software. The term of the agreement can be extended by the Consumer for one or more months.
2. The Supplier shall not be obliged to provide the Consumer with assistance on or after expiry of the right of use with a view to data conversion required by the Consumer.
3. The Consumer may at all times terminate a contract that was concluded for a specific time and which extends to the regular delivery of services at the end of the specific period, with due observance of the termination rules and a subject to not more than one month's notice.
4. The Consumer can cancel the agreements mentioned in the preceding paragraphs:
 - at least in the same way as they were concluded by him;
 - at all times with the same notice as the Supplier stipulated for himself.
5. An agreement concluded for a definite period which extends to the regular delivery of services may not be automatically extended or renewed for a fixed period.

Article 26. Complaints procedure

6. Complaints about the performance of the contract shall be submitted fully and clearly described to the Supplier within a reasonable time after the Consumer discovered the defects.
7. The complaints submitted to the Supplier shall be replied within a period of 14 days after the date of receipt. Should a complaint require a foreseeable longer time for handling, the Supplier shall respond within 14 days with a notice of receipt and an indication when the Consumer can expect a more detailed reply.
8. If the complaint cannot be solved in joint consultation within a reasonable time or within 3 months after submitting the complaint, there will be a dispute that is open to the dispute settlement rules.

Article 27. Right of use

1. The Supplier shall make the software available to the Consumer for use.
2. Except where agreed otherwise in writing, the Supplier's obligation to provide and the Consumer's right of use shall solely extend to the so-called software object code. The Consumer's right of use shall not extend to the software source code. The software source code and the technical documentation produced during the development of the software shall not be made available to the Consumer under any circumstances, even if the Consumer is prepared to pay financial compensation for this information.
3. Except where agreed otherwise in writing, the Supplier shall not be obliged to provide any software or program or data libraries other than those agreed, even if these are required for the use and/or maintenance of the software. If, contrary to the foregoing, the Supplier is required to provide software and/or program or data libraries other than those agreed, the Supplier may require the Consumer to enter into a separate written agreement for this purpose.
4. Except where otherwise agreed in writing, the Supplier's performance obligations shall not include the maintenance of the software and/or the provision of support to the users of the software. If, contrary to the foregoing, the Supplier is also required to provide such maintenance and/or support, the Supplier may require the Consumer to enter into a separate written agreement for this purpose.
5. Without prejudice to the provisions of the General module, the right of use of the software shall in all cases be non-exclusive, non-transferable and non-sublicensable.

Article 28. Restrictions on use

1. The Consumer shall strictly observe the restrictions on the right of use of the software agreed between the parties at all times. The Consumer is aware that the violation of an agreed restriction on use shall constitute both breach of the contract with the Supplier and an infringement of the intellectual property rights in respect of the software. The agreed restrictions on use may relate to such aspects as:
 - the kind or type of hardware that the software is designed for, and/or
 - the maximum number of processing units that the software is designed for, and/or
 - specific – referred to by name or job title or otherwise – individuals who may use the software within the Consumer's organisation, and/or
 - the maximum number of users who may use the software – simultaneously or otherwise – within the Consumer's organisation, and/or
 - the location at which the software may be used, and/or
 - specific forms and purposes of use (e.g. commercial use or use for private purposes), and/or
 - any other quantitative or qualitative restriction.
2. If the parties have agreed that the software may only be used in combination with specific hardware or a specific kind or type of hardware, the Consumer shall be entitled in the event of malfunction of the relevant hardware to use the software on other hardware of the same kind or type until the original hardware is restored to working order.
3. The Supplier may require the Consumer to refrain from using the software until such time as the Consumer has requested and obtained one or more codes (passwords, identity codes etc.), required for use, from the Supplier, its own supplier, or the software manufacturer. The Supplier shall be entitled to arrange for technical measures to be taken at any time in order to protect the software against unlawful use and/or against use in a manner or for purposes other than those agreed between the parties.
4. Under no circumstances shall the Consumer remove or circumvent technical provisions intended to protect the software, or arrange for this to be carried out.
5. Except where agreed otherwise in writing, the Consumer shall only be permitted to use the software within and on behalf of its own company or organisation and only for the intended use. Except where agreed otherwise in writing, the Consumer shall not use the software to process data on behalf of third parties, e.g. for services such as 'time-sharing', 'application service provision', 'software as a service' and 'outsourcing'.
6. The Consumer shall not be permitted to sell, rent out, transfer or grant restrictive rights to the software, the media on which the software is stored and the certificates of authenticity issued by the Supplier on

provision of the software, or to make these available to third parties in any way or for any purpose. The Consumer shall also refrain from granting third parties access – remote or otherwise – to the software or providing the software to a third party for the purpose of hosting, even if the third party in question only uses the software on behalf of the Consumer.

7. Upon request, the Consumer shall immediately lend its full cooperation to any investigations to be conducted by or on behalf of the Supplier in relation to the Consumer's compliance with the agreed restrictions on use. At the first request of the Supplier, the Consumer shall grant the Supplier access to its buildings and systems. The Supplier shall maintain the confidentiality of all company information to be regarded as confidential that the Supplier obtains from or on the premises of the Consumer within the context of this type of investigation, in so far as this information does not relate to the use of the software itself.

Article 29. Delivery and installation

1. The Supplier shall deliver the software to the Consumer using telecommunication facilities (online). The Supplier shall determine the delivery method.
2. The Supplier shall only install the software on the Consumer's premises if this has been agreed between the parties in writing. If no explicit agreements have been made in this regard, the Consumer itself shall install, set up, parameterise and tune the software, and adapt the hardware used and operating environment where necessary. Except where agreed otherwise in writing, the Supplier shall not be obliged to carry out data conversion.
3. The user documentation shall be provided in digital format, with the content to be determined by the Supplier. The Supplier shall decide on the format and language in which the user documentation is provided.

Article 30. Right of use fee

1. Except where agreed otherwise in writing, the right-of-use fee agreed between the parties shall be due on the dates agreed between the parties or, if no dates have been agreed:
 - a. if the parties have not agreed that the Supplier will carry out the installation of the software: on delivery of the software or, if the right-of-use fee is due periodically, on delivery of the software and subsequently on commencement of each new right-of-use period;
 - b. if the parties have agreed that the Supplier will carry out the installation of the software: on completion of the installation of the software or, if the right-of-use fee is due periodically, on completion of the installation of the software and subsequently on commencement of each new right-of-use period.
2. Except where agreed otherwise in writing, the Supplier shall not be obliged to install or adapt the software. If, contrary to the foregoing, the Supplier is also required to carry out installation activities or activities in relation to the adaptation of the software, the Supplier may require the Consumer to enter into a separate written agreement for this purpose. Such work shall be invoiced separately at the Supplier's standard rates as the occasion arises.

Article 31. Modification of the software

1. Except where agreed otherwise in writing and notwithstanding exceptions set out in law, the Consumer shall not be entitled to modify the software in part or in full without the prior written consent of the Supplier. The Supplier shall at all times be entitled to refuse its consent or to attach conditions to its consent, including conditions in relation to the method and quality of implementation of the modifications required by the Consumer.
2. The Consumer shall bear all risks associated with modifications carried out by or on behalf of the Consumer by third parties with the consent of the Supplier or otherwise.

Article 32. Guarantee

1. The Supplier shall not guarantee that the software made available to the Consumer will be fit for the actual and/or intended use by the Consumer. The Supplier shall also not guarantee that the software will operate with no interruptions, errors or defects or that all errors and defects will always be fixed.
2. The Supplier shall make every effort to fix errors in the software within the meaning of Article 5.3 of this module within a reasonable period of time if the Supplier receives detailed, written notification of these errors within a period of three months following delivery or, if the parties have agreed to an acceptance test, within three months of acceptance. Errors shall be fixed free of charge, unless the software was developed on behalf of the Consumer other than at a fixed price, in which case the Supplier shall invoice the costs associated with fixing the errors at its standard rates. The Supplier shall be entitled to invoice the costs of fixing errors at its standard rates in the event of operational errors or improper use by the Consumer, or other causes that are not attributable to the Supplier, or if the errors could have been discovered during the execution of the agreed acceptance test. The Supplier shall not be obliged to fix errors if the Consumer has made changes to the software, or has arranged for this to be carried out, without the written consent of the Supplier. Such consent shall not be withheld on unreasonable grounds.
3. The fixing of errors shall take place at a location to be determined by the Supplier. The Supplier shall be entitled to install temporary solutions, workarounds or problem-avoiding restrictions in the software at any time.
4. Under no circumstances shall the Supplier be obliged to recover scrambled or lost data.
5. The Supplier shall not be obliged to fix errors that are reported following expiry of the guarantee period referred to in Article 32.2 of this module, unless the parties have entered into a separate maintenance agreement that incorporates an obligation to this effect.

Article 33. Confidentiality

1. The Consumer acknowledges that the software is of a confidential nature and that this software contains trade secrets of the Supplier, its own suppliers and/or the software manufacturer.

Article 34. Maintenance agreement

1. If the Consumer has not entered into a maintenance agreement with the Supplier at the same time as concluding an agreement regarding the provision of the software, the Supplier shall not be obliged to enter into a maintenance agreement in respect of the software at a later point in time.

Article 35. Software from third party suppliers

1. If and in so far as the Supplier provides the Consumer with software from third parties, the (license) terms imposed by such third parties in relation to the software shall apply, provided that the Supplier has notified the Consumer of such terms in writing, notwithstanding any varying provisions in these general terms and conditions. The Consumer accepts the abovementioned terms imposed by third parties. These terms shall be available to the Consumer for inspection on the Supplier's premises and the Supplier shall provide the Consumer with a copy of the terms free of charge upon request. If and in so far as the abovementioned terms imposed by third parties in the relationship between the Consumer and the Supplier are deemed not to apply for any reason whatsoever, or are declared to be inapplicable, the provisions of these general terms and conditions shall apply in full.

Article 36. Services

1. The Supplier shall carry out maintenance work on the software specified in the agreement between the parties. The maintenance obligation shall include the fixing of errors in the software in accordance with Article 3 of this module and - only where agreed in writing between the parties - the provision of new versions of the software in accordance with Article 4 of this module.

2. Except where agreed otherwise in writing, the Supplier shall not be obliged to carry out data conversion.
3. If the agreement stipulates that the service provided by the Supplier shall also include the provision of support to users of the software, the Supplier shall issue advice by telephone or e-mail on the use and operation of the software referred to in the agreement. The Supplier may impose conditions in relation to the qualifications and the number of contacts who are eligible for support. The Supplier shall deal with properly substantiated requests for support within a reasonable period of time and in accordance with its standard procedures. The Supplier shall not guarantee the accuracy, completeness or timeliness of responses or support provided. Except where agreed otherwise in writing, support shall only be provided on working days during the Supplier's standard business hours.
4. If the agreement stipulates that the service provided by the Supplier shall also include the provision of so-called 'standby services', the Supplier shall ensure that one or more members of staff are available during the days and times specified in the agreement. If this is the case, the Consumer shall be entitled to request urgent support from the members of staff on standby in the event of a serious failure in the operation of the software. The Supplier shall not guarantee that all failures will be corrected in a timely manner should this situation arise.
5. The maintenance and any other agreed services shall be carried out with effect from the day on which the agreement was concluded.
6. The Supplier shall provide the Consumer with the service specified in the agreement between the parties in the field of Application Service Provision, Software as a Service and/or Computer Service, as well as the other services agreed between the parties. If specified in the agreement, the Supplier shall also install the software referred to in the agreement on the infrastructure specified by the Supplier. The Supplier shall not be responsible for the purchase and/or correct functioning of the Consumer's infrastructure or that of third parties.
7. Except where agreed otherwise in writing, the Consumer shall be responsible for the management, which includes monitoring settings, the use of the service and the manner in which the results obtained through the use of the software are used. The Consumer shall also be responsible for training given to and use by users, regardless of whether or not there is a relationship of authority between the Consumer and these users. If no explicit agreements have been made in this regard, the Consumer itself shall install, set up, parameterise and tune the (auxiliary) software required on its own hardware and adapt the hardware used, other (auxiliary software) and operating environment where necessary, as well as achieving the interoperability desired by the Consumer.
8. Except where agreed otherwise in writing, the Supplier shall not be obliged to carry out data conversion.
9. If the agreement stipulates that the service provided to the Consumer shall also include the provision of support to users, the Supplier shall issue advice by telephone or e-mail on the use and operation of the software referred to in the agreement and on the use of the service. The Supplier may impose conditions in relation to the qualifications and the number of contacts who are eligible for support. The Supplier shall deal with properly substantiated requests for support within a reasonable period of time. The Supplier cannot guarantee the accuracy, completeness or timeliness of responses or support provided. Except where agreed otherwise in writing, support shall only be provided on working days during the Supplier's standard business hours.
10. If the agreement stipulates that the service provided to the Consumer shall also include the creation of backups of the Consumer's data, the Supplier shall create a full backup of the Consumer's data that it has in its possession with due observance of the periods agreed between the parties in writing. If no periods have been agreed, a backup shall be created once per week. The Supplier shall retain the backup for a period of time to be agreed between the parties and if no agreements have been reached in this regard, for the Supplier's standard period of time. The Supplier shall handle and store the backup with due care and diligence.
11. The Supplier shall only be obliged to have a backup centre or other backup facilities if this has been explicitly agreed in writing.

Article 37. Provision of services

1. The Supplier shall make every effort to ensure that the services are provided with due care and in accordance with the arrangements and procedures agreed in writing with the Consumer where applicable. The Supplier shall provide all services on the basis of a best efforts obligation, unless and in so far as the Supplier has explicitly undertaken in the written agreement to achieve a specific result and the result in question is sufficiently determined.
2. The Consumer shall submit a detailed report of any errors identified in the software. Following receipt of the report, the Supplier shall make every effort to fix the errors and/or make improvements to future new versions of the software in accordance with its standard procedures. The results shall be made available to the Consumer in a manner and at a time to be determined by the Supplier, depending on the degree of urgency. The Supplier shall be entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the software. If no explicit agreements have been made in this regard, the Consumer itself shall install, set up, parameterise and tune the corrected software or the new version of the software provided, and adapt the hardware used and operating environment where necessary. The Supplier shall not guarantee that the software will operate with no interruptions, errors or defects or that all errors and defects will be fixed.
3. If the Supplier carries out the maintenance work online, the Consumer shall for its part ensure that the proper infrastructure and telecommunication facilities are in place in a timely manner. The Supplier shall be entitled to suspend or limit the maintenance work if the Consumer's infrastructure and telecommunication facilities do not meet the requirements imposed by the Supplier.
4. The Consumer shall lend any cooperation required by the Supplier for the purpose of the maintenance work, including the temporary suspension of use of the software by the Consumer if the Supplier deems this to be necessary. If the Consumer fails to lend the cooperation requested, the Supplier may suspend or limit the maintenance work. If the Supplier is providing services on the basis of information to be provided by the Consumer, this information shall be prepared in accordance with the conditions to be imposed by the Supplier and provided at the risk and expense of the Consumer. The Consumer shall at all times guarantee that all materials, information, software, procedures and instructions that it makes available to the Supplier for the purpose of providing the services is accurate and complete and that all data carriers issued to the Supplier meet the Supplier's specifications.
5. If the maintenance work relates to software that was not provided to the Consumer by the Supplier itself, the Consumer shall make the software source code and technical (development) documentation (including data models, designs, change logs etc.) available if the Supplier deems this to be useful, necessary or desirable for the purpose of carrying out the maintenance work. The Consumer shall guarantee that it is entitled to make this data and/or documentation available and that the rights of third parties do not prevent it from doing so. The Consumer shall grant the Supplier the right to use and adapt the software, including the source code and technical (development) documentation, within the context of performing the agreed maintenance work. The Consumer shall indemnify the Supplier against any claims by third parties in relation to the provision of this data and/or documentation and the Supplier's use of the data and/or documentation provided within the context of the maintenance work.
6. The maintenance work by the Supplier shall not affect the Consumer's responsibility to manage the software, which includes monitoring settings, the use of the software and the manner in which the results obtained through the use of the software are used. The Consumer shall also be responsible for training given to and use by users, regardless of whether or not there is a relationship of authority between the Consumer and these users. If no explicit agreements have been made in this regard, the Consumer itself shall install, set up, parameterise and tune the (auxiliary) software and adapt the hardware used and operating environment where necessary, as well as achieving the interoperability desired by the Consumer.
7. The Supplier shall only perform the service on behalf of the Consumer. If the Supplier carries out work relating to the Consumer's data or that of its employees or users pursuant to a request or an authorised order from a government agency or in connection with a statutory obligation, the Consumer shall be invoiced for all of the associated costs.

8. The Supplier may make adjustments to the content or scope of the service. If such adjustments result in a change in the procedures that apply to the Consumer, the Supplier shall notify the Consumer as soon as possible and the costs of this change shall be borne by the Consumer. In this case, the Consumer may terminate the agreement in writing with effect from the date on which the change takes effect, unless this change is related to changes in relevant legislation or other regulations issued by competent authorities, or if the Supplier bears the costs of this change.
9. The Supplier may continue to provide the service using a new or amended version of the software. The Supplier shall not be obliged to maintain, change or add certain features or functionalities of the service or the software specifically for the Consumer.
10. The Supplier may temporarily suspend the service in full or in part for the purpose of carrying out preventive, corrective or adaptive maintenance. The Supplier shall not suspend the service for longer than necessary and shall arrange for this to take place outside of office hours where possible and, according to the circumstances, shall notify the Consumer in advance.
11. If the Supplier is providing services on the basis of information to be provided by the Consumer, this information shall be prepared and supplied by the Consumer in accordance with the conditions to be imposed by the Supplier. The Consumer shall bring the data to be processed to, and collect the results of the processing from, the location at which the Supplier is providing the service. Transport and transmission, in any form whatsoever shall take place at the risk and expense of the Consumer, even if this is carried out or organised by the Supplier. The Consumer shall at all times guarantee that all materials, information, software, procedures and instructions that it makes available to the Supplier for the purpose of providing the services is accurate and complete and that all data carriers issued to the Supplier meet the Supplier's specifications.
12. All hardware, software and items used by the Supplier in providing the service shall remain the property or the intellectual property of the Supplier or its own suppliers, even if the Consumer pays a fee in respect of the development or purchase of these by the Supplier.
13. The Supplier shall under no circumstances be obliged to provide the Consumer with a physical data carrier containing the software to be made and kept available to the Consumer within the context of Application Service Provision and/or Service as a Service, or the software to be used by the Supplier within the context of Computer Service.

Article 38. New versions of the software

1. The maintenance work shall only include the provision of new versions of the software if and in so far as this has been agreed in writing. If the maintenance work includes the provision of new versions of the software, the provision of this software shall take place at the Supplier's discretion.
2. Once three months have passed since the date on which the Supplier provided an improved version of the software, the Supplier shall no longer be obliged to fix any errors in the previous version or to provide support and/or carry out maintenance work in relation to the previous version.
3. The Supplier may require the Consumer to enter into a new written agreement with the Supplier prior to the provision of a version with new options and functions, and is entitled to apply a new fee to this version. The Supplier may copy functionality from a previous version of the software unchanged, however it does not guarantee that each new version will incorporate the same functionality as the previous version. The Supplier shall not be obliged to maintain, change or add certain features or functionalities of the software specifically for the Consumer.
4. The Supplier may require the Consumer to adapt its system (hardware, software etc.) if this is necessary in order to ensure the proper functioning of a new version of the software.

Article 39. Acceptance

1. The Consumer shall accept the software in the condition that it is in at the time of delivery ('as is'), therefore with all visible and invisible errors and defects, without prejudice to the Supplier's obligations pursuant to the guarantee scheme in Article 32.

2. Where this module refers to 'errors', this shall be understood to mean the substantial failure to meet the functional or technical specifications of the software made known by the Supplier in writing and, if the software is entirely or partly custom-designed, the functional or technical specifications explicitly agreed between the parties in writing. An error shall only be deemed to exist if the Consumer is able to demonstrate the error and if it can be reproduced. The Consumer is obliged to notify the Supplier immediately of any errors.
3. The software shall be deemed to have been accepted between the parties if the Consumer uses the software for productive or operational purposes.
4. The Supplier shall make every effort to fix the errors identified within a reasonable period of time, whereby the Supplier shall be entitled to install temporary solutions, workarounds or problem-avoiding restrictions in the software.
5. Acceptance of the software may not be withheld on grounds that do not relate to the specifications explicitly agreed between the parties, nor due to the existence of minor defects, these being defects that cannot reasonably be deemed to prevent the operational or productive use of the software, without prejudice to the Supplier's obligation to fix these minor defects within the context of the guarantee scheme in Article 9, if and in so far as applicable. Acceptance may also not be withheld on the basis of aspects of the software that can only be assessed subjectively, such as aesthetic aspects and aspects relating to the design of user interfaces.
6. Acceptance of the software by one of the methods referred to in this Article shall mean that the Supplier is discharged in respect of compliance with its obligations in relation to the provision and delivery of the software and, if it has been agreed that the Supplier will carry out the installation, with its obligations in relation to the installation of the software. Acceptance of the software shall not affect the Consumer's rights in relation to minor errors and Article 32 in relation to the guarantee scheme.

Article 40. Exclusions with regards to software maintenance

1. The maintenance of the software shall not include the fixing of errors, defects or shortcomings arising from or related to:
 - a. usage errors or the improper use of the software, including errors that occur during the data input process or in the data itself
 - b. changes to the software other than those carried out by or on behalf of the Supplier
 - c. use of the software contrary to the applicable conditions or contrary to the instructions in the user documentation
 - d. changes to or errors, defects or shortcomings in the hardware or software that is not included within the scope of the maintenance work to be carried out by the Supplier
 - e. failure by the Consumer to have maintenance work carried out on the software in a timely manner
 - f. the use of an older version of the software that is no longer maintained by the Supplier
 - g. the recovery of scrambled or lost data
 - h. other causes that are not attributable to the Supplier.
2. If the Supplier carries out maintenance work or other work in connection with the provisions of Article 40.1, the Supplier shall be entitled to invoice the costs of this maintenance work or other work in accordance with its standard rates. This shall not affect the other fees payable by the Consumer in respect of maintenance work.

Article 41. Applicable law and disputes

1. The agreements between the Supplier and the Client shall be governed by Dutch law. The applicability of the Convention on Contracts for the International Sale of Goods 1980 is excluded.
2. Any disputes that may arise between the Supplier and the Client on the basis of an agreement concluded between the Supplier and the Client or as a result of further agreements that arise from such an agreement, shall be settled through arbitration in accordance with the Arbitration Regulations of the for the Settlement of Automation Disputes, with its registered office in The Hague, without prejudice to the right of either of the parties to request an injunction in summary arbitral proceedings and without prejudice to the right of either of the parties to take precautionary legal measures (see www.sgoa.org).
3. Contrary to the provisions of Article 43.2, either of the parties shall be entitled, however not obliged, to bring the matter before the District Court, Subdistrict Sector, if the matter relates to a dispute that according to the statutory rules governing jurisdiction falls within the subject-matter jurisdiction of the District Court, Subdistrict Sector. This shall only be the case, however, where the Supplier and/or the Client has/have not already brought arbitral proceedings for the resolution of disputes arising on the basis of the agreement concluded between the parties or further agreements that arise from such an agreement before the for the Settlement of Automation Disputes in accordance with the 's Arbitration Regulations. If the matter is brought before the District Court, Subdistrict Sector, by one or more of the parties for processing and a decision, subject to due observance of the previous subclause, the District Court, Subdistrict Sector, shall have jurisdiction to process the matter and reach a decision.
4. Before instituting arbitral proceedings as referred to in Article 43.2, either of the parties shall commence ICT- Mediation proceedings in accordance with the ICT- Mediation Regulations of the for the Settlement of Automation Disputes in The Hague. ICT- Mediation proceedings in accordance with these regulations are aimed at mediation by one or more mediators. The other party shall undertake to actively participate in any ICT-Mediation proceedings that are instituted, and shall in any event be legally obliged to attend at least one joint meeting between the mediators and the parties, in order to ensure that this extrajudicial form of dispute resolution has a chance of success. Either of the parties shall be at liberty to terminate the ICT-Mediation proceedings at any time following an initial discussion between the mediators and the parties. The provisions of this subclause shall not prevent either of the parties from requesting an injunction in summary (arbitral) proceedings or from taking precautionary legal measures where they deem this to be necessary (see www.sgoa.org and www.sgoa.eu).

Article 42. Additional provisions or derogations

1. Additional provisions of and/or derogations from these General Terms and Conditions should not be to the Consumer's detriment and must be put in writing or recorded in such a way that the Consumer can store them in an accessible manner on a long-term data carrier.

Appendix I: Standard form for withdrawal

Standard Form for Withdrawal

(Complete this form and return it only when you want to revoke the agreement)

HyperVen
Serpeling 10
1562 KT Krommenie
info@hyperventilation.info

I/We hereby inform you that I/we wish to revoke our agreement on the sale of the following products:
[specification of the product]*

the delivery of the following digital content [specification of the digital content]*
the performance of the following service [specification of the service]*

Ordered on*/received on* [date of ordering the services or receiving products]*

[Consumer's name]

[Consumer's address]

[Consumer's signature] (only when this form is submitted on paper)

*) Delete and/or complete where appropriate.