

General Terms and Conditions of Van Drunen Automatisering B.V.

1. Preamble

The present General Terms and Conditions apply to all offers, legal relations and agreements pursuant to which Van Drunen Automatisering B.V. delivers goods and/or renders services to the client. Moreover, these conditions will apply to any and all agreements entered into by the parties in the future, unless expressly stated otherwise.

Deviations from or supplements to these General Terms and Conditions will only be valid upon express written agreement.

All offers submitted by Van Drunen Automatisering B.V. are free of any obligation.

The client warrants the correctness and completeness of all measures, requirements, specifications and other data as provided to Van Drunen Automatisering B.V. by or on behalf of the client and used by Van Drunen Automatisering B.V. as the basis of its offers.

Any applicability of purchase conditions and any other conditions are hereby expressly denied.

If any provision contained in these General Terms and Conditions is deemed invalid or declared void, the remaining provisions of these General Terms and Conditions will remain in force unimpaired.

2. Price

All prices are exclusive of VAT and any other government levies, unless stated otherwise.

The client is held to pay the invoices of Van Drunen Automatisering B.V. within a period of fourteen days after the date of invoice, unless expressly agreed otherwise.

The client is not entitled to set-off or suspension of any payments.

If the client fails to pay in a timely manner, the client will be due – without a judicial warning or notice of default being required - a statutory interest over the unpaid amount to be increased with 1 percent a year.

If, upon issue of a judicial warning or service of a notice of default, the client still fails to pay the outstanding debt (in full), Van Drunen Automatisering B.V. will be entitled to pass on the claim for collection, in which case the client will be held to pay all judicial and extrajudicial costs of collection next to the total amount payable.

The extrajudicial costs are set to amount to at least 15% of the total amount payable, such to minimum amount of € 250.

Wherever possible, Van Drunen Automatisering B.V. will engage in electronic invoicing. The parties hereby agree that electronic invoices will be subject to the same procedure as conventional paper invoices.

If, at the request of the client, Van Drunen Automatisering B.V. has executed activities, rendered services or delivered products falling outside of the volume or scope of the assignment agreed on, such activities, services or products will be settled by the client with Van Drunen Automatisering B.V. as 'additional work' in accordance with the applicable rates of Van Drunen Automatisering B.V. Additional work is also understood to include supplements or changes to system analyses, designs or specifications.

3. Ownership

Title to all products as delivered to the client will remain vested in Van Drunen Automatisering B.V. until the client has fully settled all amounts payable for all goods delivered or to be delivered, all activities executed or to be executed and/or all services rendered or to be rendered pursuant to this agreement or any other agreements, as well as any other amounts the client is payable to Van Drunen Automatisering B.V. on account of failure to comply with any payment obligation(s).

A client acting as reseller will have the right to sell and resell all products subject to retention of title of Van Drunen Automatisering B.V. insofar as this is common within the framework of the normal exercise of the client's business activities.

If the client uses (some of) the products delivered by Van Drunen Automatisering B.V. to put together a new product, title to this product will be solely vested in Van Drunen Automatisering B.V. and the client will retain this new product on behalf of Van Drunen Automatisering B.V. until the client has settled all due amounts with Van Drunen Automatisering B.V. In such case, Van Drunen Automatisering B.V. will have full ownership rights in respect of the new product until the client has settled all payable amounts in full.

4. Delivery and transfer of risk

All terms (of delivery) as stated or agreed on by Van Drunen Automatisering B.V. have been established to the best of the company's knowledge on the basis of the information known to Van Drunen Automatisering B.V. at the time of entering into the agreement. However, exceeding of these terms will not be under penalty of forfeiture of rights. Van Drunen Automatisering B.V. will endeavour to observe the (delivery) terms to the fullest extent possible. The mere transgression of a stated or agreed (delivery) term will not constitute a case of default on the part of Van Drunen Automatisering B.V.

In all cases, including cases in which the parties have expressly agreed on a deadline in writing, Van Drunen Automatisering B.V. will only be deemed to be in default after the client has informed Van Drunen Automatisering B.V. of a case of default, thus allowing Van Drunen Automatisering B.V. a reasonable term to remedy such default at all times.

If Van Drunen Automatisering B.V. is not able to remedy the default within the term set, Van Drunen Automatisering B.V. will have the right to proceed to extrajudicial dissolution of the agreement, without such dissolution constituting a right or obligation to pay damages.

The risk of loss, theft or damage to goods, products, software or data subject to the agreement will pass to the client as soon as the client or an auxiliary person of the client is authorised to take actual possession of such goods, products, software or data.

5. Client cooperation

The client is held to provide Van Drunen Automatisering B.V. with all data or information conducive to or required for proper performance of the agreement in a timely manner as well cooperate in every possible manner, such including the granting of access to its company buildings.

If, within the framework of client cooperation on performance of the agreement, the client deploys its own staff, this staff will be required to possess the necessary knowhow, experience, capacities and qualities. The selection of staff, the use and application of the equipment, software, websites, data files and other products and materials within the client's organisation, as well as the services to be rendered by Van Drunen Automatisering B.V. will be at the client's risk. In addition, the client will be responsible for the relevant control and security procedures and adequate system management.

If the client provides Van Drunen Automatisering B.V. with information carriers containing software, websites, materials, data files or data, such carriers will be required to meet the specifications as prescribed by Van Drunen Automatisering B.V.

If the client fails to provide Van Drunen Automatisering B.V. with the necessary data, equipment, software or employees for performance of the agreement or if the client fails to do so in a timely manner, or fails to observe its obligations under the agreements in any other way, Van Drunen

Automatisering B.V. will have the right to proceed to suspension of the agreement, in full or in part, and be entitled to charge the client the costs arising from this in accordance with its usual rates, such without prejudice to the right of Van Drunen Automatisering B.V. to exercise any other rights by law.

In case the employees of Van Drunen Automatisering B.V. conduct their activities on location, the client will ensure that these employees are provided with all facilities as reasonably requested, such as a workspace with computer and telecommunication facilities and Internet connection and access, free of charge. The workspace and facilities are to comply with all applicable (statutory) requirements and regulations pertaining to working conditions.

The client will indemnify Van Drunen Automatisering B.V. against any third-party claims, including claims of employees of Van Drunen Automatisering B.V. sustaining damage as a result of the acts or omissions of the client or as a result of unsafe situations within the client's organisation.

The client will timely inform any employees of Van Drunen Automatisering B.V. to be engaged for the activities of the house and security rules applicable within the client's organisation. If telecommunication facilities, such including the Internet, are used for performance of the agreement, the client will be responsible for the proper choice and timely and adequate provision thereof, such with the exception of those facilities directly used and managed by Van Drunen Automatisering B.V. Van Drunen Automatisering B.V. cannot in any event be held liable for any damage or costs incurred as a result of transmission failures, faults or failure to provide these facilities, unless the client is able to demonstrate that the damage or costs are the result of intentional acts or omissions or gross negligence on the part of employees of Van Drunen Automatisering B.V. or their supervisors.

If telecommunication facilities are used for performance of the agreement, Van Drunen Automatisering B.V. will have the right to require access and identification codes from the client and assign these codes to the client. Van Drunen Automatisering B.V. has the right to change the assigned access and identification codes. The client is held to observe confidentiality and due care with regard to the access codes and to provide these to authorised staff only. Van Drunen Automatisering B.V. cannot in any way be held liable for damage or costs incurred as a result of abuse of the access or identification codes.

6. Non-competition

Both during the term of the agreement and for a period of one year after termination thereof, the client will require the prior written approval of Van Drunen Automatisering B.V. in respect of employing or hiring the services of staff of Van Drunen Automatisering B.V. engaged, now or in the past, in performance of the agreement, such in the broadest sense of the word and regardless of whether such staff are paid or not.

7. Intellectual property rights

Title to all intellectual and industrial property rights of the software, websites, data files, equipment or any other materials such as analyses, designs, documentation, reports, offers, as well as preparatory materials as developed or provided by Van Drunen Automatisering B.V. will be solely vested in Van Drunen Automatisering B.V.

The client will only acquire the rights of use expressly conferred under these General Terms and Conditions and by law. Any other or broader rights of the client allowing multiplication of the software, websites, data files or other materials are hereby excluded.

The right of use accruing to the client is non-exclusive and cannot be transferred to third parties. The client will not be allowed to change or remove any indication pertaining to the confidential nature or pertaining to the copyrights, brands, trade names or any other intellectual or industrial property rights from the software, websites, data files, equipment or materials.

Van Drunen Automatisering B.V. will be allowed to take technical measures in order to protect its software or restrict the client's right to use the software in accordance with the contract duration agreed on. The client will not be allowed to remove or evade such technical measures.

If security measures render it impossible for the client to make a reserve copy of the software, Van Drunen Automatisering B.V. will provide the client with a reserve copy if so requested.

If Van Drunen Automatisering B.V. does not provide the client with a reserve copy of the software, the client will be allowed to make one reserve copy which may be solely used by way of protection against involuntary loss or damage.

If Van Drunen Automatisering B.V., to its sole discretion, is unable to warrant the client's undisturbed use of the delivered goods, or if such warranty is (financially) unreasonably burdensome for Van Drunen Automatisering B.V., Van Drunen Automatisering B.V. will take back the delivered goods and credit the client for the amount of purchase while deducting a reasonable compensation for any use already made. Van Drunen Automatisering B.V. will not decide on such issues prior to consulting the client. Any other or more extensive forms of liability or third-party indemnity of Van Drunen Automatisering B.V. arising from violation of intellectual or industrial property rights of third parties are hereby fully excluded, such including liability and third-party indemnity of Van Drunen Automatisering B.V. for any infringement caused by use of the delivered software, websites, data files, equipment and/or materials (i) in a form not modified by Van Drunen Automatisering B.V., (ii) in connection with any goods or software not delivered or provided by Van Drunen Automatisering B.V., or (iii) caused by use in any way other than the purpose for which the equipment, software, websites, data files and/or other materials have been developed or intended.

If the parties expressly agree in writing that title to the intellectual or industrial property rights of the software, websites, data files, equipment or other materials as specifically developed by Van Drunen Automatisering B.V. will be transferred to the client, this will not impair the right of Van Drunen Automatisering B.V. to otherwise apply and commercially develop the parts, general principles, ideas, designs, documentation, works, programming language, etc., at the basis of their development, such without limitation, and either for its own benefit or for the benefit of third parties.

In addition, a transfer of intellectual or industrial property rights will not impair the right of Van Drunen Automatisering B.V. to engage in developments, either for its own benefit or for the benefit of third parties, which are similar to the developments realised on behalf of the client.

The client warrants that there are no third-party rights opposing the provision to Van Drunen Automatisering B.V. of equipment, software, material intended for use on websites (visual material, text, music, domain names, logos, etc.), data files or other materials, such including draft materials intended for use, processing, installation or incorporation (e.g. in a website). The client will indemnify Van Drunen Automatisering B.V. against all causes of action based on the allegation that such provision, use, processing, installing or incorporating infringes any third-party rights.

8. Termination of the agreement

If one of the parties attributably fails to perform essential obligations from the agreement, the other party will only be authorised to proceed to dissolution of the agreement following service of a proper notice of default containing as much detailed information as possible and stating a reasonable term within which the default can be remedied, unless specifically determined otherwise by the agreement or these General Terms or Conditions.

Agreements entered into for an indefinite period of time and not ending upon completion of performance by nature of their form and substance can be terminated by either party in writing following proper mutual consultation while stating the reasons for termination. If the parties have not agreed on an explicit term of notice, termination must be effected with due observance of a reasonable term.

Van Drunen Automatisering B.V. will not in any event be held to pay any damages on account of termination of the agreement. In deviation of what is laid down by regulatory law in this respect, the client may only terminate a service agreement in cases provided for by the present General Terms and Conditions.

Each one of parties may terminate the agreement with immediate effect, in whole or in part, in writing and without notice of default being required if the other party has been granted – provisional or non-provisional - suspension of payments, if bankruptcy proceedings have been instituted against the other party or if the other party's business is wound up or ended in any way other than for the benefit of restructuring or merging of the companies.

Van Drunen Automatisering B.V. will not in any event be held to refund any payments already made or to pay damages on account of termination in the above-mentioned cases. In the case of bankruptcy, the client's right of use to any software provided will expire directly.

If, upon dissolution in the case referred to in the first paragraph of this article, parts of the agreement have already been performed for the benefit of the client, this part performance and the related payment obligation will not be undone, unless the client is able to demonstrate that Van Drunen Automatisering B.V. is in default in respect of this part performance. Amounts chargeable or invoiced by Van Drunen Automatisering B.V. before dissolution in respect of performance already rendered under the agreement will remain fully due and become immediately due and payable upon dissolution.

9. Liability

The total amount of liability on the part of Van Drunen Automatisering B.V. on account of attributable non-performance of the agreement will be restricted to payment of the direct damage up to the maximum amount as stipulated in the agreement in question (exclusive of VAT). If the agreement primarily is a continuing performance contract with a duration of more than one year, the amount as stipulated under this contract will be set at the total payment (exclusive of VAT) due for one year. However, the total payment for direct damage will not in any event exceed an amount of € 500,000 (five hundred thousand euro).

Liability on the part of Van Drunen Automatisering B.V. for damage sustained in the event of death or bodily harm, or on account of material damage to goods will not in any event exceed an amount of € 1,000,000 (one million euro).

Liability on the part of Van Drunen Automatisering B.V. for indirect damage, consequential damage, loss of profit, unrealised cost reduction, decrease of goodwill, damage caused by stagnation of business operations, damage as a result of claims raised by the client's customers, mutilation or loss of data, damage relating to the client's use of goods, materials or third-party software as required by Van Drunen Automatisering B.V., damage relating to the client's assignment of suppliers as required by Van Drunen Automatisering B.V., as well as any liability for damage other than listed above in this article, regardless of the nature of such damage, is hereby excluded.

The restrictions of liability for damage as referred to in the preceding paragraphs of this article will not apply if and insofar as such damage is the result of acts or omissions or gross negligence on the part of Van Drunen Automatisering B.V.

Liability on the part of Van Drunen Automatisering B.V. on account of attributable non-performance of an agreement will only arise after the client has immediately served a proper notice of default on Van Drunen Automatisering B.V. while stating a reasonable term for remedying the non-performance and Van Drunen Automatisering B.V. continues to be in default after this term.

The notice of default is required to describe the instance of non-performance as fully and detailed as possible in order to enable Van Drunen Automatisering B.V. to react adequately.

Any right to the payment of damages will in all instances be subject to the condition that the client reports the damage in writing as soon possible after it arises. Complaints are to be reported within a term of four weeks. Any claims to damages will expire upon transgression of the term for filing a complaint and in any case upon the mere lapse of a period of 24 months after the claim has arisen.

The client indemnifies Van Drunen Automatisering B.V. against any and all third-party claims of product liability arising from a defect in a product which has been delivered by the client to a third party and has been partly composed from equipment, software or other materials as delivered by Van Drunen Automatisering B.V., unless the client is able to demonstrate that the damage has been caused by such equipment, software or other materials.

The provisions laid down in this article also apply in respect of all persons engaged by Van Drunen Automatisering B.V. for performance of the agreement.

10. Delivery of services

If the activities of Van Drunen Automatisering B.V. comprise the rendering of services, such as the rendering of advice, consultancy, hosting and the rendering of network services, Van Drunen Automatisering B.V. will endeavour to provide such services with due care and subject to the obligation of Van Drunen Automatisering B.V. to perform to the best of its abilities.

If performance of the agreement to render services has been assigned to a particular person, Van Drunen Automatisering B.V. will have the right to replace this person with an equally qualified person.

In addition, Van Drunen Automatisering B.V. will be free to commission the provision of such services to third parties.

11. Delivery of equipment and supplies

Delivery of equipment will not automatically imply installation thereof. Delivery by Van Drunen Automatisering B.V. will also include installation only if the parties have expressly agreed on this.

Guarantees on delivered equipment will be subject to the conditions of guarantee applied by the third parties from which Van Drunen Automatisering B.V. has purchased this equipment. In respect of this equipment, the client hereby accepts these third-party conditions of guarantee.

In consultation with the client, Van Drunen Automatisering B.V. may keep supplies of a particular quantity of products and/or accessories on the client's behalf. The risk in these products, both in respect of storage and transportation to the client's location, will be fully at the expense of the client. In order to cover such risk the client is allowed or may be required to take out insurance. Any liability for defects and damage to the supplies is hereby excluded.

12. Force Majeure

Van Drunen Automatisering B.V. will not be held to perform any obligation under the agreement, if so prevented by a case of force majeure. Force majeure will be understood to include force majeure on the part of suppliers of Van Drunen Automatisering B.V., inadequate performance of obligations by suppliers engaged by Van Drunen Automatisering B.V. on the instruction of the client, as well as faultiness of third-party goods, materials and software used by Van Drunen Automatisering B.V. on the instruction of the client.

If a case of force majeure exceeds a term of 90 days, the parties will have the right to dissolve the agreement by means of a written statement. Any performance rendered under the agreement prior to dissolution will be settled pro rata, without any other or further obligations arising for both parties.

13. Applicable law and disputes

The agreements concluded between Van Drunen Automatisering B.V. and the client will be governed by Dutch law. Any applicability of the Vienna Sales Convention 1980 is hereby excluded. In the case of obscurities in the English translation of these General Terms and Conditions, the original provisions contained in the Dutch text will prevail.

Any disputes arising between the parties will be submitted to the exclusive jurisdiction of the District Court of Rotterdam, the Netherlands.