

# General Terms of Sale

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## Intersolve Group B.V.

These are the general terms of sale for the sale of products and services (other than payment services) by Intersolve Group B.V., established at Woudenberg, The Netherlands, and registered at the chamber of commerce with number 32153540 and its affiliates Intersolve Technologies B.V. and Intersolve Payments B.V. Insofar these general terms of sale mention Intersolve, reference is made to the legal entity in the Intersolve group that has a legal relationship with Customer and/or the entity that delivers the products and services.

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## 1 Definitions

- 1.1 In these general terms of sale and the Agreement, the capitalized words shall have the following meaning.
- (a) **Agreement(s)**: the arrangements between Intersolve and Customer on the delivery of Products and Services by Intersolve to Customer to which these general terms of sale apply.
  - (b) **Confidential information**: the contents of the Agreement and any data originating from or regarding the parties and/or their relations that is provided to the other party or otherwise becomes known to that party in the context of the Agreement. Confidential information shall at least include Personal data, concepts, texts, images, working processes and specifications for Products and Services.
  - (c) **Customer**: the natural person or legal entity that purchases the Products and/or Services from Intersolve.
  - (d) **Deliverable(s)**: the Products or (part of) the Services to be supplied by Intersolve or the right of use to be provided by Intersolve or a combination thereof, including materials and documents.
  - (e) **Error(s)**: substantial failure of the Services or Products to meet functional or technical specifications of the Services or Products expressly made known by Intersolve in writing and, if all or part of the Services or Products concerns customized Services or Products, to meet the functional or technical specifications expressly agreed in writing.
  - (f) **Minor Error(s)**: Errors that do not reasonable prevent the operational or productive use of the Products or Services.
  - (g) **Offer**: a concrete and specific offer by Intersolve to deliver Products and/or Services to Customer.
  - (h) **Order**: a concrete and specific order by Customer to deliver Products and/or Services to Customer.
  - (i) **Personal data**: any information relating to an identified or identifiable natural person as referred to in the General Data Protection Regulation (*Algemene Verordening Gegevensbescherming*) ("GDPR").
  - (j) **Product(s)**: any products, including usage rights, that Intersolve supplies on the basis of the Agreement, not including third party products that the Customer purchased directly from that third party.
  - (k) **Service(s)**: any services (other than payment services), including Software as a Service, Intersolve delivers on the basis of the Agreement, not including third party services that the Customer purchased directly from that third party.

## **2 General and applicability**

- 2.1 These general terms of sale are applicable to any legal relationship between Intersolve and Customer, including Agreements, in the course of which Intersolve delivers Products and/or Services to Customer.
- 2.2 Additions to or deviations from these general terms of sale shall only apply where agreed in writing between the parties.
- 2.3 The applicability of any of Customer's purchasing or other terms and conditions is expressly rejected and not applicable to the Agreement.
- 2.4 If any provision of general these terms of sale is null and void or is voided, the other provisions of these general terms of sale will remain fully in effect. In this case, Intersolve and Customer will consult with each other to agree new provisions to replace the void or voided provisions. In doing so, the purpose and meaning of the void or voided provision will be taken into account as far as possible. The other provisions remain in force unaltered.
- 2.5 Delays, default or negligence in the enforcement of any provision of the Agreement by Intersolve shall not be regarded as a declaration of invalidity or will by any means affect the rights of Intersolve.
- 2.6 In case of any conflict or discrepancy between these general terms of sale and the Agreement, the content of the Agreement shall prevail. In case of any conflict or discrepancy between these general terms of sale and any translation thereof, the Dutch version shall prevail.
- 2.7 Intersolve may amend or supplement these general terms of sale from time to time. The parties agree that the amended or supplemented general terms of sale will be deemed to have been accepted by the Customer and will apply to the Agreement 30 (thirty) days after these amended or supplemented terms have been provided to the Customer, unless the Customer objects in writing to any amendments or additions within 30 (thirty) days after they have been provided.

## **3 Offers and conclusion of the Agreement**

- 3.1 All Offers and other statements issued by Intersolve shall be subject to its confirmation, except where explicitly specified otherwise by Intersolve. By confirming an Offer by Intersolve, the Agreement is deemed to be concluded and Customer acknowledges that these general terms of sale are applicable thereto, unless expressly agreed otherwise.
- 3.2 Intersolve is not bound to obvious mistakes or errors in the Offer.
- 3.3 By accepting an Order from Customer by Intersolve, or by the execution thereof by Intersolve, the Agreement is deemed to be concluded and Customer acknowledges that these general terms of sale are applicable thereto, unless expressly agreed otherwise.
- 3.4 Customer shall guarantee the accuracy and completeness of the information that it submits to Intersolve and on which Intersolve bases its Offer.

- 3.5 Measurements and information stated in drawings, pictures, catalogues, websites, quotations, advertising material, standard sheets etc. shall not have a binding effect on Intersolve, except where explicitly specified otherwise by Intersolve.
- 3.6 The conclusion of an Agreement does not implicate any exclusivity for Intersolve.
- 3.7 Article 6:254 of the Dutch Civil Code (*Burgerlijk Wetboek*) is not applicable to any third-party clauses in the Agreement, except where the third party concerned is an affiliate of Intersolve.

#### **4 Obligations Intersolve**

- 4.1 Intersolve undertakes to perform the Agreement with the extent of care that may be demanded from a reasonably acting, competent and professional supplier under comparable circumstances and under comparable contractual terms and conditions.
- 4.2 If Intersolve has reason to expect that it will not meet an agreed service level or otherwise breach the Agreement, Intersolve shall inform Customer thereof by notice.
- 4.3 Intersolve shall use reasonable efforts to ensure that staff and freelancers deployed for the delivery of Services are sufficiently available and qualified and have relevant training, expertise and experience.

#### **5 Obligation to cooperate of Customer**

- 5.1 In order to facilitate the proper execution of the Agreement by Intersolve, Customer shall at all times provide Intersolve with all data or information that Intersolve deems to be useful, necessary and desirable and to give its full cooperation in a timely manner.
- 5.2 If Customer 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.
- 5.3 If use is made of computer, data or telecommunication facilities, including the internet, during the execution of the Agreement, Customer 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 Intersolve. Intersolve 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 Customer is able to demonstrate that these losses or costs are the result of intentional acts or deliberate recklessness on the part of the Intersolve's management.



- 5.4 If computer, data or telecommunications facilities are used during the execution of the Agreement, Intersolve shall be entitled to assign access or identification codes to Customer. Intersolve shall be entitled to change the access or identification codes assigned. Customer shall be fully responsible for such codes and treat the codes as confidential and with due care and shall only disclose these codes to authorized members of staff. Intersolve 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 Intersolve.
- 5.5 Customer shall be responsible for creating relevant account, where such creating is necessary for the use of Services and/or Products.
- 5.6 If Intersolve carries out activities on Customer's business premises, Customer 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. Customer shall notify the employees deployed by Intersolve of any applicable company rules or security rules prior to the commencement of the activities.
- 5.7 Customer shall at all times exercise the greatest possible care to ensure that its requirements regarding Products and Services are accurate and comprehensive, including required technical and functional specifications.
- 5.8 Customer shall be responsible for applying for, obtaining and retaining the (software) licences, approvals, permits and certificates from third parties and accreditations necessary for the performance of the Agreement, at its own expense

## **6 Performance of the Agreement**

- 6.1 Service levels shall only be applicable if the parties have agreed service levels in the Agreement.
- 6.2 Intersolve does not guarantee that the Services or Products made available to and held by Customer in the context of the Agreement are free of Errors and function completely without interruptions. If Customer detect Errors, it shall notify Intersolve in writing. Intersolve shall make effort to fix Errors in the Services or Products within a reasonable term upon such notification. Where Errors concern Minor Errors, Intersolve may postpone the fixing thereof until a new version of the software is put into operation. The obligation to fix Errors shall cease to apply if Customer makes changes in the Services or Products or has such changes made without Intersolve's written permission.
- 6.3 Fixing work shall be carried out free of charge, unless Services or Products were developed on the instructions of Customer other than for a fixed price, in which case Intersolve shall charge for the costs of fixing in accordance with its usual rates. Intersolve may also charge for costs of fixing in accordance with its usual rates if such work is required as a result of user errors or improper use on the part of Customer.

6.4 In relation to the provision of the Services, Intersolve shall implement all reasonable procedures and take all reasonable precautions necessary to preserve the continuity of the Services and prevent disruptions.

6.5 Barring exceptions provided by law, Customer may not change all or part of Products without the prior written permission of Intersolve. Intersolve is entitled to refuse or attach conditions to such permission. Customer shall bear the entire risk of all changes that it makes or changes made by third parties on its instructions, whether or not with Intersolve's permission.

## **7 Provision of Services**

7.1 Services to be provided by Intersolve commence within a reasonable term following the conclusion of the Agreement. Customer shall promptly ensure that it has the facilities required to use the Services following the conclusion of the Agreement.

7.2 Intersolve shall only provide Services on the instructions of Customer. Customer may not allow third parties to make use of the Services without the consent of Intersolve.

7.3 Intersolve may update the Services and continue to provide Services using a new or modified version. If such update or new or modified version result in a material change in the Services or Customer's current procedures, Intersolve shall inform Customer about the matter as soon as possible. Customer may in this case give notice of termination (*opzeggen*) of the Agreement, which termination shall then take effect on the date on which the change takes effect, unless the change is related to changes in relevant legislation or other instructions issued by competent bodies.

## **8 Acceptance**

8.1 If the parties have not agreed an acceptance test, Customer deems to have accepted Deliverables upon delivery in the state that it is in when delivered ('as is'), therefore with all visible and invisible errors and defects, without prejudice to Intersolve's obligations to remedy Errors.

8.2 The provisions of clause 8.3 up to and including 8.9 shall apply if an acceptance test has been agreed between the parties.

8.3 The test period shall amount to 14 days following delivery or, if installation by Intersolve has been agreed, 14 days following the completion of installation. Customer shall carry out the agreed acceptance test with qualified personnel and with sufficient scope and depth

8.4 Customer shall check whether Deliverables meet the functional and technical specifications agreed in the Agreement.

8.5 The parties shall deem Deliverables to have been accepted:

- (a) on the day that Customer accepts the Deliverable in writing insofar this acceptance takes place in the test period;



- (b) on the first day following the end of the test period; or
- (c) if Customer uses Deliverables in any way for production or operational purposes: on the day at which this use occurs.

- 8.6 If it becomes apparent during performance of the acceptance test that Deliverables contain Errors, Customer shall report the test results to Intersolve without undue delay. Intersolve shall fix the Errors referred to within a reasonable term.
- 8.7 Customer may not refuse to accept Deliverables because of the existence of Minor Errors or on unreasonable grounds, the foregoing without prejudice to Intersolve's obligation to fix these Minor Errors in accordance with clause 6.2.
- 8.8 If Deliverables are delivered and tested in phases and/or parts, non-acceptance of a certain phase and/or part shall be without prejudice to the acceptance of a previous phase and/or different part.
- 8.9 Acceptance of Deliverables shall serve to discharge Intersolve of its obligations regarding making the Deliverable available and delivering the Deliverable and, if installation of the Deliverable by Intersolve has also been agreed, of the obligations regarding installation. Acceptance of software shall be without prejudice to Customer's rights based on clause 8.7.

## **9 Delivery dates**

- 9.1 All (delivery) periods and (delivery) dates agreed or specified by Intersolve shall be established to the best of Intersolve'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 Intersolve shall in all cases be target dates. Intersolve shall make every reasonable effort to observe final (delivery) periods and final (delivery) dates wherever possible. Intersolve shall 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, Intersolve shall consult with the Customer in order to discuss the implications of the overrun for the rest of the schedule.
- 9.2 The mere fact that a (delivery) period or (delivery) date, final or otherwise, specified by Intersolve or agreed between the parties has been exceeded, shall not mean that Intersolve is automatically in default. Intersolve shall only be in default if Customer has given written notice of default giving Intersolve a reasonable term of at least 30 days to perform and Intersolve fails to cure its breach within such term. The notice of default must contain a description of the breach that is as comprehensive and detailed as possible, in order to ensure that Intersolve has the opportunity to respond adequately.

## **10 Additional work**

- 10.1 If Intersolve has carried out work or delivered products that fall outside of the content or scope of the agreed Services or Products in the Agreement at the request or with the prior consent of Customer, such services shall be paid for by Customer in accordance with the rates agreed in the Agreement. If no rates have been agreed, Intersolve's standard rates shall apply. Intersolve shall under no circumstances be obliged to accept a request to carry out additional work. Where it does accept, it may require the Customer to enter into a separate written agreement for this purpose.
- 10.2 Customer accepts that additional work or services as referred to in this clause may affect the agreed or anticipated time of completion of the Services or delivery of the Products and the mutual responsibilities of Customer and Intersolve. The fact that (the demand for) additional work or services arises during the execution of the Agreement shall under no circumstances constitute grounds for Customer to terminate (*opzeggen*) or rescind (*ontbinden*) the Agreement.
- 10.3 Insofar as a fixed price has been agreed in respect of the Services, Intersolve shall, upon request, notify the Customer in writing regarding the financial implications of the additional work or services as referred to in this clause.

## **11 Price and payment**

- 11.1 All prices are exclusive of turnover tax (VAT) and other applicable government levies. Except where agreed otherwise, all prices are in euros and Customer must effect all payments in euros.
- 11.2 If Customer 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.
- 11.3 If the Agreement contains a periodic payment obligation for Customer, Intersolve shall be entitled to annually adjust the applicable prices and rates in accordance with the Service Producer Price Index (SPPI) of the CBS.
- 11.4 All amounts that relate to the Services or Products provided by Intersolve shall be payable each calendar month in advance, unless expressly agreed otherwise.
- 11.5 Customer shall pay the amounts owed for any applicable license fees at the agreed times or, if a time has not been agreed:
- (a) if the parties have agreed that Intersolve shall install the Deliverables, when the Products are accepted in accordance with clause 8.3 up to and including 8.8;
  - (b) if the parties have not agreed that Intersolve shall install the Products, when the Deliverables are delivered.
- 11.6 Customer shall effect payment of amounts due within a 30-day period after the date of invoice, unless expressly agreed otherwise. Customer shall not be entitled to suspend any payments or to set-off any amounts due.



- 11.7 Payments made by the Customer shall first of all serve to settle any payable interest and costs and subsequently the longest outstanding payable invoices, even if the Customer should state that the payment is related to a subsequently sent invoice.
- 11.8 In the event of a bona fide dispute with regard to the invoiced amounts, Customer shall send a notice of such dispute to Customer within 14 days after receipt of the relevant invoice, stating the disputed amount and the reasons for disputing it. Where the Customer disputes the amount of an invoice, such dispute shall not suspend the fulfilment of the payment obligation within the term stated in clause 11.6. The parties shall enter into reasonable negotiations regarding the disputed amount. If Intersolve reasonably believes the dispute is justified, Intersolve shall refund the disputed amount.
- 11.9 If Customer fails to pay an invoice in a timely manner, statutory commercial interest shall be payable by Customer on the outstanding amount without a demand or notice of default being required. If Customer still fails to pay the amount owed after receiving a demand or notice of default, Intersolve may refer the debt for collection, in which case Customer 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.

## **12 Confidentiality**

- 12.1 Each party shall ensure that all Confidential information received from the other party shall be treated confidential. The party that receives such Confidential information shall only use this information for the purpose for which it has been provided.
- 12.2 The obligation mentioned in clause 12.1 is not applicable to information that:
- (a) is in the public domain at the time it was disclosed or will enter the public domain through no action or inaction of receiving party; or
  - (b) was known to the receiving party without restriction, at the time of disclosure.
- 12.3 The parties may disclose Confidential information to a third party by virtue of any applicable statutory provision or to an authority or regulatory body with authority over that party. This disclosure shall not extend further than necessary to comply with the statutory provision respectively the request. To the extent permitted, a party shall immediately notify the other party of such request or obligation and discuss a response.
- 12.4 At the end of the Agreement, either party shall delete or destroy any Confidential information it received from the other party in response to a request thereto of the other party.
- 12.5 During the term of the Agreement and for one year following the expiry or termination of the Agreement, each of the parties shall only engage or otherwise employ, directly or indirectly, members of staff of the other party who are or were previously involved in the execution of the Agreement after obtaining the prior written consent of the other party. Conditions may be attached to the aforementioned consent.

### **13 Compliance**

- 13.1 The parties shall comply with all statutory laws and regulations in the performance of the Agreement.
- 13.2 The parties shall discuss with each other any imminent relevant changes in regulations that may have an impact on the Products and Services in good time as soon as they become aware of these.
- 13.3 Customer shall ensure that its locations satisfy the applicable laws and regulations, such as working conditions ('ARBO') standards.

### **14 Audit**

- 14.1 Insofar Customer is obliged by applicable law to conduct an audit at its suppliers, including Intersolve, Customer is entitled to maximally once a year conduct an audit at Intersolve by an external independent auditor and only to the aspects that must be verified in order to satisfy Customer's statutory obligations. The time and location of the audit and the manner in which the audit is conducted shall be determined in consultation with Intersolve.
- 14.2 Intersolve shall lend its reasonable cooperation and give access to the relevant systems and documents insofar as these are related to the Services or Products. Customer shall bear its own and Intersolve's costs in respect of the audit.
- 14.3 Intersolve shall also lend its reasonable cooperation in audit requests that are based on audit requests made by Customer's regulators and give access to the relevant systems and documents insofar as these are related to the Services or Products. Customer shall bear its own and Intersolve's costs in respect of the audit.
- 14.4 Each party shall limit the impact of audits. Customer shall make sure Intersolve's performance of the Services, its internal business and its performance of services for third parties will not be disrupted or disturbed. Customer shall not get access to Personal data other than Customer's own Personal data, to client data of other clients of Intersolve and to other company-sensitive data of Intersolve.

### **15 (Personal) data and security**

- 15.1 The parties shall comply with their specific obligations under the GDPR and other applicable regulations in respect of Personal data within the context of the performance of the Services and/or delivery of the Products.
- 15.2 Responsibility for the data, including Personal data, processed using the Services provided by Intersolve shall rest solely with Customer. Customer shall guarantee Intersolve that the content, the use and/or the processing of the data is lawful and does not infringe the rights of third parties. Customer shall indemnify Intersolve against legal claims by third parties, of whatever nature, in relation to this data or the execution of the Agreement in this respect.

- 15.3 Intersolve may use data, including transaction data and Personal data for analytical and statistical purposes. Intersolve will process data for these purposes with due care, and in an aggregated manner.
- 15.4 Insofar as the Services to be performed by Intersolve are (also) comprised of processing Personal data on behalf of Customer, Intersolve is deemed to be a processor within the meaning of the GDPR, and shall only process Personal data in accordance with the instructions of Customer and the provisions of the Agreement.
- 15.5 If Intersolve performs work relating to the data of Customer, its employees or users pursuant to a request or a competently issued order of a court, government agency or in connection with a legal obligation, all costs associated with this work shall be charged to Customer.
- 15.6 Customer shall at Intersolve's first request, agree on further arrangements about the processing of Personal data in a 'data processing agreement' on the basis of Intersolve's template, which then applies in addition to this clause and the processing described herein.
- 15.7 If the Agreement stipulates that Intersolve 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. Intersolve 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 regarding the protection of Personal data shall be of such a level that, having regard to the state of the art, the costs of implementation and the nature, scope, context and purpose of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons are appropriate and not unreasonable.

## **16 Location delivery, risk and retention of title**

- 16.1 Insofar Intersolve delivers Services and/or Products at Customer's business premises, Products and Services are delivered at the agreed location or, absent such, at the location designated by Intersolve for that purpose. The Customer shall take on the Products at the time of delivery. If the Customer refuses to take on the Products or fails to provide information or instructions required for delivery, the Products will be stored at the risk of the Customer. In this case, the Customer must pay the storage costs, without prejudice to Intersolve's right to still claim performance and/or full compensation and to proceed to rescind (*ontbinden*) the Agreement.
- 16.2 Customer is responsible for installation, organization, parameterization, tuning and, if necessary, modification of required equipment and operating environment used.
- 16.3 Intersolve shall deliver Products on a type of data carrier determined by Intersolve, or shall make the Products available to Customer online.



- 16.4 Intersolve may retain any Deliverables, items, products, proprietary rights, data, documents, software, data files and (interim) results of the Services provided by Intersolve received or created within the context of the Agreement, contrary to an existing obligation to deliver or transfer these, until such time as Customer has paid all amounts due to Intersolve.
- 16.5 The risk of loss, theft, misappropriation of or damage to Products and/or Services, including Deliverables, 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 Customer upon delivery.
- 16.6 All Products delivered to the Customer shall remain the property of Intersolve until such time as all amounts owed by Customer to Intersolve pursuant to the Agreement concluded between the parties have been paid in full. If Customer acts as a retailer, it shall be entitled to sell and resell all Products that are subject to Intersolve's retention of title insofar as this is customary within the context of the normal course of its business. If Customer is entitled to create a new product (partly) from Products, Customer shall only create this item for the benefit of Intersolve and Customer shall retain the newly created product for Intersolve until such time as Customer has paid all amounts due pursuant to the Agreement; in this case Intersolve shall remain the owner of the newly created product until Customer has met its payment obligations in full.
- 16.7 Customer shall store delivered Products under retention of title separately and with the required care and identifiable as the property of Intersolve and Customer shall insure the products against the usual risks.
- 16.8 Rights, including rights of use, shall be granted to Customer or transferred, if agreed, subject to the condition that Customer has paid all of the fees due pursuant to the Agreement concluded between the parties in full. If the parties have agreed that Customer shall be subject to a periodic payment obligation in respect of the granting of a right of use, Customer shall be entitled to the right of use for as long as it continues to meet its periodic payment obligation.

## **17 (Intellectual) property**

- 17.1 Intersolve or its licensors are owner of the intellectual property right on or in the Products and Services. No transfer of ownership results from the Agreement, except where these general terms of sale expressly state otherwise.
- 17.2 All intellectual property rights to the Deliverables, such as software, websites, data files, hardware or other products or materials such as analyses, designs, documentation, reports, quotations and related preliminary material developed or made available to Customer on the basis of the Agreement shall remain exclusively vested in Intersolve, its licensors or its own suppliers, unless explicitly stated otherwise. Any rights of use granted to Customer shall be non-exclusive, non-transferable to third parties, non-sublicensable and solely for the term of the Agreement.

- 17.3 In deviation of clause 17.1 shall all intellectual property rights in the Deliverables that concern any configurations of, reporting functionality for data from, and integrations to/from the Services or Products that are specific to and created and delivered solely and exclusively for Customer by Intersolve under the Agreement be transferred to Customer. The parties shall cooperate with any necessary acts to establish such transfer. The Customer hereby grants Intersolve a license in such Deliverables that is perpetual, transferable and non-exclusive, royalty free, irrevocable worldwide and with the right to grant sub-licenses, which Intersolve accepts.
- 17.4 The transfer of any intellectual property right in a Deliverable to Customer shall not affect Intersolve's right to carry out development work, on its own behalf or on behalf of a third party, that is similar or derived from the development work that is being carried out or has been carried out on behalf of Customer.
- 17.5 Customer 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 Deliverables.
- 17.6 Customer shall comply with the agreed restrictions on the use of the Services and Products, regardless of the nature or content of these restrictions. Intersolve shall be entitled to install technical provisions for the purpose of protecting the Products and Services against unlawful use and/or against use in a manner or for purposes other than the manner or purposes agreed between the parties, even if the Agreement does not explicitly provide for such authority. Customer shall under no circumstances be permitted to remove or circumvent such technical provisions or to arrange for this to be carried out.

## **18 Right of use**

- 18.1 Intersolve shall grant Customer a non-exclusive, non-transferable, non-sublicensable right to use Products and/or Services for the duration of the Agreement.
- 18.2 Intersolve's obligation to make available and Customer's right of use extend only to the Products' object code. Intersolve shall not make the Products' source code and technical documentation prepared during the development of the Products available to Customer.
- 18.3 If the parties have agreed that the Services and/or Products may only be used in combination with certain equipment, Customer shall in the event of any malfunction of this equipment be entitled to use the Products on other equipment with the same qualifications during the time that the original equipment remains defective.
- 18.4 Certain Services and Products require a login code for usage. Customer may only use these Services and Products after receiving such login code. Intersolve shall make these codes available to Customer.
- 18.5 If so requested, Customer shall cooperate without delay in an investigation into compliance with the agreed restrictions on use carried out by or for Intersolve. Should Intersolve so demand, Customer shall provide Intersolve with all necessary information and grant Intersolve access to its buildings and systems, also insofar as any requested information does not directly concern the use of Services and Products itself.

- 18.6 Intersolve shall not be obliged to maintain the Services and Products, unless agreed otherwise in the Agreement.
- 18.7 Following the end of the Agreement, Customer shall refrain from using any codes received for the use of Products and Services and return all copies of the Products in its possession to Intersolve without undue delay. If it has been agreed that Customer must destroy any copies concerned at the end of the Agreement, Customer shall destroy such copies and report the destruction of the copies to Intersolve in writing without delay. Customer shall request data conversions before the end of the Agreement. After the end of the Agreement, Intersolve is not obliged to provide assistance for the purpose of a data conversion requested by Customer.

## **19 Third party software**

- 19.1 If and insofar as Intersolve makes third-party software available to Customer, the license terms of the third parties concerned shall apply in the relationship between Intersolve and Customer with respect to the software instead of the provisions of these general terms of sale that differ from these general terms of sale. Intersolve shall inform Customer of the applicability of the license terms of the third party concerned and, in addition, shall make available or link to a copy of the applicable license terms prior to the conclusion of the Agreement.
- 19.2 If and insofar as, for whatever reason, the terms of third parties referred to above are deemed not to apply or are declared inapplicable in the relationship between Customer and Intersolve, the provisions of these terms of sale shall apply.

## **20 Indemnification**

- 20.1 Customer fully indemnifies Intersolve for all costs, expenses and damages that Intersolve suffers or has suffered as a result of:
- (a) all possible claims of Customer's customers and other third parties that arise in any way from the failure of Customer to fulfil its obligations or a guarantee issued under the Agreement or any other serious or negligent act or omission Customer;
  - (b) product liability following a defect in a product or system that Customer supplied, unless and insofar Customer is able to prove that the loss was caused by the equipment, software or other materials supplied by Intersolve; and
  - (c) fraud, misuse or other unlawful use of the Products and/or Services,

unless the damage referred to in this clause is due to attributable failure to meet the obligations of Intersolve under the Agreement or compliance with laws and regulations by Intersolve itself.

20.2 Intersolve shall indemnify Customer against any legal claims from third parties based on the assertion that a Product or Deliverable infringes an intellectual property right of the third party in question, provided that (i) Customer notifies Intersolve immediately in writing of the existence and content of the legal claim and (ii) leaves the disposal of the case, including any settlements effected, entirely to Intersolve. To this end, Customer shall provide Intersolve with the powers of attorney, information and cooperation that it requires in order to defend itself, where necessary in the name of Customer, against these legal claims. This obligation to indemnify shall not apply if the alleged infringement relates to (i) materials made available to Intersolve by Customer for the purpose of use, adaptation, processing or incorporation, or (ii) changes made by Customer, or by a third party on behalf of Customer, to Products or Deliverables, without Intersolve's prior written consent. If it is irrevocably established in court that the Products or Deliverables constitute an infringement of any intellectual property right vested in a third party or if Intersolve believes that there is a good chance that such an infringement may occur, Intersolve shall, where possible, ensure that Customer can continue to use the Products or Deliverables, or functionally similar alternatives. All other or further-reaching obligations to indemnify on the part of Intersolve shall be excluded. This is Customer's sole remedy in the event of such claims.

## **21 Liability**

21.1 Intersolve's total liability due to an attributable failure in the performance of the contract or on any legal basis whatsoever, expressly including each and every indemnification and failure to fulfil a warranty obligation agreed with Customer, shall be limited to compensation for direct damage up to a maximum of the price stipulated for the Agreement concerned (excluding VAT). If the Agreement is mainly a continuing performance contract with a term of more than one year, the price stipulated for the Agreement shall be set at the total amount of the payments (excluding VAT) stipulated for one year. Intersolve's total liability for direct loss, on any legal basis whatsoever, shall never amount to more than EUR 500.000 (five hundred thousand euros).

21.2 In deviation of the first paragraph, is Intersolve's total liability for loss due to death or bodily injury or as a result of material damage to items limited to EUR 1.250.000 (one million two hundred fifty thousand euros).

21.3 Intersolve's liability for indirect loss, consequential loss, loss of profits, lost savings, reduced goodwill, loss as a result of claims of Customer's customers, loss arising from the use of items, materials or software of third parties prescribed by Customer to Intersolve and loss arising from the engagement of suppliers prescribed by Customer to Intersolve is excluded.

21.4 The exclusions and limitations referred to in clause 21.1 t/m 21.3 shall cease to apply if and insofar as the loss is the result of deliberate intent or recklessness on the part of Intersolve.

21.5 The provisions of this clause and all other limitations and exclusions of liability referred to in these terms of sale shall also apply for the benefit of all natural persons and legal entities that Intersolve engages in the performance of the Agreement.



## **22 Force majeure**

- 22.1 None of the parties shall be obliged to fulfil any obligation, including any statutory and/or agreed warranty obligation, if it is prevented from doing so by force majeure. Force majeure means the circumstances described in article 6:75 of the Dutch Civil Code (*Burgerlijk Wetboek*).
- 22.2 Either party shall have the right to terminate (*opzeggen*) the Agreement in writing if a situation of force majeure persists for more than 30 days. In such event, everything that has already been performed under the Agreement shall be paid for on a proportional basis without the parties owing each other anything else.

## **23 Term, termination and rescission of the Agreement**

- 23.1 The Agreement ends by operation of law at the end of the agreed term of the Agreement. If the parties continue to perform the Agreement after the end of the term, the terms and conditions thereof remain in force and each party is entitled to terminate (*opzeggen*) the Agreement at the end of each calendar month with a three-month cancellation period.
- 23.2 An Agreement which, due to its nature and content, does not end in completion and which has been entered into for an indefinite period of time may be terminated (*opzeggen*) by either party in writing following consultation between the parties. Reasons for the termination must be stated. If a notice period has not been agreed between the parties, a reasonable period, but at least three months, must be observed when notice of termination is given. Intersolve is never obliged to pay any compensation due to termination.
- 23.3 Either party may terminate (*opzeggen*) the Agreement in writing in whole (not in part) without notice of default being required and with immediate effect, if the other party is granted a moratorium, whether or not provisional, a petition for bankruptcy is filed for the other party or the company of the other party is liquidated or dissolved other than for restructuring or a merger of companies. Intersolve may also terminate (*opzeggen*) the Agreement without notice of default being required and with immediate effect, if a direct or indirect change occurs or the decisive control of the Customer's company. The parties are never obliged to repay any amount in compensation due to termination as referred to in this clause.
- 23.4 If the Customer goes irrevocably bankrupt, its right to use the Products and/or Services made available to it shall end with immediate effect, as shall its right to access and/or use Services, without termination by Intersolve being required.
- 23.5 Each party shall only be authorized to rescind (*ontbinden*) the Agreement due to an attributable failure in the performance of the Agreement of the other party, in the cases provided by law. Intersolve shall only be in default if Customer has given written notice of default giving Intersolve a reasonable term of at least 30 days to perform and Intersolve fails to cure its breach within such term. The notice of default must contain a description of the breach that is as comprehensive and detailed as possible, in order to ensure that Intersolve has the opportunity to respond adequately.



23.6 In the event of termination (*opzegging*), rescission (*ontbinding*) or expiry of the Agreement, all claims that Intersolve has or obtains against the Customer shall be immediately due and payable in full. If, at the time of rescission (*ontbinding*), Intersolve has already provided part of the Services, Products or additional work, this part of the Services, Products or additional work and the related payment obligations shall not be subject to the cancellation obligation (“*ongedaanmakingsverplichting*”), unless the Customer proves that Intersolve is in default (*verzuim*) with respect to a substantial part of the Services, Products or additional work provided. Amounts invoiced in connection with properly delivered Services, Products or additional work prior to rescission (*ontbinding*) of the Agreement shall remain due.

## **24 Transfer of rights and obligations**

24.1 Customer shall not be entitled to sell and/or transfer the rights and/or obligations arising from the Agreement to a third party, without Intersolve’s prior written approval.

24.2 Intersolve shall be entitled to transfer its rights and obligations under the Agreement in full or in part to a third party or engage any subcontractor without prior consent of Customer.

## **25 Publicity**

Customer is not entitled to refer in any way to the existence of the Agreement, Offer or Order in brochures, advertisements or otherwise, newspapers, procedures and letters, etc., without the written permission of Intersolve.

## **26 Consultation**

Insofar as the parties consult each other periodically to discuss the progress of Services to be delivered or Products to be developed the reports of such consultations shall be drafted by Intersolve, and approved or commented by Customer within five working days. If after five working days Intersolve has not received approval or comment from Customer, the reports are deemed to provide a correct and complete description of the consultation.

## **27 Communication**

27.1 All notifications are made in writing. Verbal announcements, promises or agreements have no legal force, unless they are confirmed in writing.

27.2 Customer shall, upon receipt of any information generated by Intersolve, immediately inform Intersolve in writing of incorrect information or misunderstandings.

## **28 Applicable law and disputes**

28.1 These general terms of sale and the Agreement are construed under and governed by Dutch law. Applicability of international regulations and treaties, such as the Vienna Sales Convention, is excluded as far as possible.

28.2 Disputes arising from or related to these terms of sale or the Agreement will exclusively be submitted to the competent court of the court located in Utrecht.