

GENERAL CONDITIONS

Digi D Sign

Version v.2 / 2007



TABLE OF CONTENTS

1.	GENERAL	1
1.1.	APPLICABILITY	1
1.2.	DEFINITIONS	1
1.3.	CONFIRMATION/OFFERS	1
1.4.	AGREEMENTS	1
1.5.	CO-OPERATION/INFORMATION REQUIREMENTS FOR THE CUSTOMER	1
1.6.	CONFIDENTIALITY/NON-COMPETITION	2
1.7.	1.7 LIABILITY	2
1.8.	TRANSFER	2
1.9.	FORCE MAJEURE	2
1.10.	NULLITY	2
1.11.	APPLICABLE LAW AND DISPUTE MECHANISM	2
2.	DDS PRODUCTS.....	3
2.1.	USER RIGHTS STANDARD PRODUCTS	3
2.2.	VERIFICATION	3
2.3.	BACK-UPS	3
2.4.	ERRORS	3
2.5.	WARRANTY	3
2.6.	MAINTENANCE	3
2.7.	SUPPORT	3
2.8.	PROJECT MANAGEMENT	3
2.9.	ADVICE	4
2.10.	ACTIVITIES	4
2.11.	ADDITIONAL WORK	4
3.	DEVELOPMENT	4
3.1.	CUSTOM WORK.....	4
3.2.	FEASIBILITY STUDY	4
3.3.	ACCEPTANCE PROCEDURE	4
3.4.	DEVELOPMENT ENVIRONMENT	4
4.	DELIVERY	4
4.1.	DELIVERY	4
4.2.	(DELIVERY) DATES	4
4.3.	RISK	5
4.4.	INSTALLATION AND IMPLEMENTATION	5
4.5.	REPLACEMENT PERFORMANCE	5
5.	THIRD-PARTY PRODUCTS.....	5
5.1.	THIRD PARTY PRODUCTS	5
5.2.	THIRD PARTY GENERAL CONDITIONS	5
6.	PRICES/PAYMENTS	5
6.1.	PRICES AND PAYMENTS.....	5
6.2.	PRICE CHANGES	5
6.3.	FIXED PRICE	5
6.4.	SUBSEQUENT CALCULATION	5
6.5.	ADVANCE	5
7.	INTELLECTUAL PROPERTY RIGHTS	6
7.1.	RIGHTS OF THE CUSTOMER AND DDS	6
7.2.	INDEMNIFICATION.....	6
7.3.	CUSTOM WORK.....	6

1. GENERAL

1.1. Applicability

- 1.1.1. These conditions are applicable to all proposals and/or deliveries made by DDS (Digi D Sign) and agreements and/or other legal relationships between DDS and the Customer, the resulting provisions and related activities regardless of whether or not they are based on a verbal, written, and/or electronic agreement, unless otherwise agreed upon in writing.
- 1.1.2. The applicability of purchase conditions or any other conditions from the Customer or from third parties on behalf of the Customer is expressly rejected by DDS unless explicitly accepted in writing by DDS.
- 1.1.3. The General Conditions DDS are available on the DDS website (<http://www.digi-d-sign.nl/general.conditions.pdf>) and will be sent upon request.
- 1.1.4. DDS reserves the right to make alterations and/or additions to the General Conditions DDS. The modified General Conditions DDS will become applicable, unless objections against modifications are made in writing within 30 (thirty) days of the notification date of the change.
- 1.1.5. Changes in and additions to the General Conditions DDS and/or agreements made between DDS and the Customer are only valid when agreed to by parties in writing.
- 1.1.6. If the Customer consists of more than one legal entity or organization, each will be responsible for the entire fulfillment of the obligations that may flow forth from the agreement with DDS.
- 1.1.7. The headings above the articles of these General Conditions DDS are only intended to increase the legibility of this document. The content and meaning of an article placed under a particular heading is, therefore, not limited to the meaning and content of the heading.

1.2. Definitions

- 1.2.1. In the General Conditions DDS the following words and expressions are capitalized. Any of the following words and expressions shown in the singular shall have the same meaning when used in the plural and vice-versa.
- 1.2.2. Advance:
As further described in article 6.5.
- 1.2.3. Back-up:
Spare copies of digital data and/or information.
- 1.2.4. Custom Work:
A product and/or project developed by DDS on the basis of the requirements and/or wishes of the Customer.
- 1.2.5. Customer:
Anyone who requests and orders the delivery of Products.
- 1.2.6. Development Environment:
An environment controlled and monitored by DDS to which the Customer may gain access via a web application.
- 1.2.7. Error:
As further described in article 2.4.1.
- 1.2.8. Fixed Price:
As further described in article 6.3.
- 1.2.9. Feasibility Study:
As further described in article 3.2.1.
- 1.2.10. Identification Codes:
Usernames, passwords, address codes, and/or other codes used to access the Development Environment.
- 1.2.11. DDS:
DIGI D SIGN and its rightful successors or affiliated organizations and partners that will enter into an agreement with the Customer and have declared the General Conditions DDS applicable.
- 1.2.12. Maintenance:
As further described in article 2.6.
- 1.2.13. Object Code:
The computer programming code substantially in binary form. It is directly executable by a computer after processing, but without reverse engineering, compilation, or assembly.
- 1.2.14. Products:
All Standard Products, Custom Work, and/or Third Party Products provided by DDS, the resulting provisions and related activities.
- 1.2.15. Standard Products:
All standard products and services provided by DDS and the resulting provisions and related activities, which do not originate from third parties and whose intellectual property rights, industrial property rights, and other rights are held by DDS and/or a direct subsidiary of DDS.
- 1.2.16. Source Code:
The computer programming code that may be displayed in a form readable and understandable by a programmer of ordinary skill. It includes related Source Code level

system documentation, comments and procedural code. The Source Code does not include the Object Code.

- 1.2.17. Subsequent Calculation:
As further described in article 6.4.
- 1.2.18. Support:
As further described in article 2.7.
- 1.2.19. Third Party General Conditions:
Third Party General Conditions are amongst others understood as the delivery conditions, license conditions, warranty conditions, or other conditions maintained by a third party.
- 1.2.20. Third Party Products:
All products and services provided by DDS, the resulting provisions and related activities, which originate from third parties and whose intellectual property rights, industrial property rights, and other rights are not held by DDS and/or a direct subsidiary of DDS.
- 1.2.21. Warranty:
As further described in article 2.5.
- 1.2.22. Workdays:
Dutch hours (10.00-18.00) and days (Monday through Friday) with the exception of public holidays.
- 1.3. **Confirmation/Offers**
- 1.3.1. Verbal agreements, assignments, or other expressions of whatever nature by employees of DDS are only valid and binding when they have been confirmed in writing by an authorized representative of DDS.
- 1.3.2. All offers made are without engagement, unless the offer explicitly indicates otherwise in writing.
- 1.3.3. Offers are based on the data, information or requirements made known by the Customer as set out in article 1.5.
- 1.4. **Agreements**
- 1.4.1. If a proposal, contract, or other similar legally binding document is sent by DDS to the Customer and the Customer fails to return a signed copy of this document to DDS, the Customer accepts by payment of compensation to DDS the contents of that document and these General Conditions DDS.
- 1.4.2. DDS shall commence execution of the agreement between DDS and the Customer only after a signed copy of the agreement drawn up by DDS has been received by DDS and/or having received payment of all amounts due fully and timely. Should DDS commence execution of the agreement prior to receiving a signed copy of the agreement and/or having received payment of all amounts due fully and timely, DDS reserves the right to suspend execution of the agreement pending receipt of a signed copy of the agreement and/or payment of all amounts due fully and timely.
- 1.4.3. An agreement between DDS and the Customer, for which no further contract and/or term has been agreed, has a term of 1 (one) year if the delivery concerns a Product such as but not limited to Maintenance and Support, for which a periodic fee is charged. If this agreement is not terminated or not terminated in time, it is extended repeatedly in increments of 1 (one) year.
- 1.4.4. Termination of the agreement as described in article 1.4.3 occurs by means of a registered letter, which must be received by the other party no later than 60 (sixty) days prior to the expiration date of the agreement.
- 1.4.5. Each party has the right to terminate the agreement wholly or partially without judicial intervention by means of a signed registered letter. This can be done if, after notifying the breaching party in writing of a failure to fulfill their obligations, the breaching party then fails to meet the aforesaid obligations within a reasonable period of time.
- 1.4.6. Each party has the right to immediately terminate the agreement wholly or partially without judicial intervention through means of a non-judicial declaration and/or withdraw and/or annul an offer if the other party submits a legal request for debt restructuring, if bankruptcy or suspension of payment has been filed for the other party, if the other party is in a state of bankruptcy or suspension of payment has been granted, or if the other party's company is liquidated or ended for any reason other than reconstruction or company merger. In these cases, any claim by DDS will be immediately due.
- 1.4.7. After the agreement has been ended, for any reason, parties can no longer obtain any of the rights provided by the agreement, leaving unhindered the existence of the obligations of both parties which by their nature continue automatically after the conclusion of their agreement, such as but not limited to, obligations concerning property rights, confidentiality, and non-competition.
- 1.5. **Co-operation/Information Requirements For the Customer**

- 1.5.1. All assignments are carried out by DDS on the basis of data, information, requests, and/or requirements made known to DDS by the Customer.
- 1.5.2. The Customer shall provide all necessary cooperation to DDS and shall make timely known all useful and necessary data and/or other information required for an adequate execution of the agreement. The Customer shall ensure the accuracy of this data and/or other information.
- 1.5.3. If data, information, and/or other requirements necessary for execution of the agreement are not, and/or not timely, and/or not in accordance with the agreement made available to DDS or if the Customer fails to meet its obligations in any other way, DDS has in any case the right to terminate or dissolve the agreement or to suspend execution of the agreement and DDS has the right to charge the costs incurred at its usual rates.
- 1.5.4. If changes and/or new facts arise in regard to data, information, requests, and/or requirements provided earlier, DDS will always be fully justified in consultation with the Customer to adjust the agreement to these new circumstances or to dissolve or annul the agreement.
- 1.5.5. In the event DDS performs activities on a location other than its own, the Customer will be responsible for providing free of charge reasonable requested facilities, such as office space and telecommunication facilities.
- 1.5.6. If requested, the Customer will provide DDS remote access to the environment in which the Products operate in accordance with the requirements as set by DDS.
- 1.6. Confidentiality/Non-competition**
- 1.6.1. DDS and the Customer mutually commit themselves to the confidentiality of all data and information concerning each other's organization, clients, files, and Products of which they become aware while working for each other. Data and information may only be used in order to carry out the agreement between parties.
- 1.6.2. DDS is authorized to place the name and logo of the Customer on the DDS website and/or reference list and to make them available to a third party for information.
- 1.6.3. The Customer will not enter into any direct or indirect commercial, employment, or other such relations with employees from DDS during the agreement and for a period of 12 (twelve) months after termination or dissolution of the agreement, without the written consent of DDS.
- 1.6.4. In the event that the Customer breaches article 1.6.3, the Customer will be charged, without further notification required, a fine of Euro 50.000,- (fifty thousand) for each breach, undiminished the right of DDS to claim full compensation for damages incurred.
- 1.7. Liability**
- 1.7.1. DDS's total liability due to culpable failure to fulfill the agreement shall be limited, in accordance with this article, to compensation for direct damage and to a maximum of the amount of the price stipulated in the agreement (excluding VAT) as actually paid by the Customer to DDS on the basis of the agreement for 1 (one) year (this being the year in which the damage occurred) to a maximum of Euro 250.000,- (two hundred and fifty thousand), whereby a sequence of events is regarded as one event.
- 1.7.2. DDS's total liability for damage resulting from death or physical injury will in no event amount to more than Euro 1.000.000,- (one million), whereby a sequence of events is regarded as one event.
- 1.7.3. Direct damage is exclusively understood as:
- The reasonable expenses which the Customer would have to incur to make DDS's performance conform to the agreement; this alternative damage shall not be compensated, however, if the agreement is rescinded by or at the suit of the Customer;
 - The reasonable costs made in determining the cause and the extent of the damage;
 - The reasonable costs incurred in prevention or limitation of damage, to the degree that the Customer can demonstrate that these costs have led to the limitation of the damage.
- 1.7.4. DDS's liability for indirect damage, including consequential damage, loss of profit, loss of savings, mutilated and/or lost data, delays, losses, damage as a result of a failure of the Customer to provide the required information or assistance, damage through corporate inactivity, and/or claims from third parties against the Customer, is expressly rejected.
- 1.7.5. DDS's liability exists solely when the Customer immediately and appropriately notifies DDS of the deficiency in writing, proposing therein a reasonable time period for correction of the deficiency and DDS then culpably fails to meet the aforesaid obligations. The notification of deficiency ought to be as detailed a description of the deficiency as possible so that DDS is able to react adequately.
- 1.7.6. The condition for the existence of any right to compensation is always that the Customer notifies DDS in writing within 60 (sixty) days after the damage came into existence by registered mail and takes the necessary measures to limit the damage as much as possible.
- 1.7.7. The Customer indemnifies DDS from all liability resulting from third parties due to allegations as a consequence of deficiency in a product, system, or service provided by the Customer to third parties that consisted of a delivery made by DDS.
- 1.7.8. DDS does not accept any liability for damage regardless of its nature caused by Third Party Products which DDS has delivered to the Customer. If possible DDS will transfer its rights for damage compensation from the supplier of the Third Party Product in question to the Customer.
- 1.7.9. DDS is not liable for any damage regardless of its nature, which is the result of a failure to provide Support, Maintenance, and/or Warranty on time.
- 1.7.10. The limitation of liability in this article 1.7 shall not be applicable in case of malicious intent (opzet) or reckless disregard (bewuste roekeloosheid).
- 1.8. Transfer**
- 1.8.1. The agreement between DDS and the Customer and the rights and obligations, which flow forth from this agreement, cannot be transferred to a third party by the Customer without the prior written consent from DDS.
- 1.8.2. The Customer gives DDS in advance the right, without needing the explicit approval of Customer, to transfer the whole agreement or parts thereof to:
- holding-, sister- and/or subsidiary companies;
 - a third party in the case of merger or acquisition of DDS. In the event this happens DDS will inform the Customer.
- 1.9. Force Majeure**
- 1.9.1. Neither party is obligated to fulfill any obligation if they are prevented from doing so as a result of circumstances, which can be considered beyond their fault, and by law, legal act, or generally accepted practices cannot be held accountable for. The aforementioned circumstances include circumstances that are beyond DDS's power as well as business risks of DDS, these include but are not limited to failure to perform by a supplier of DDS, the late or nonavailability of required information and specifications and/or changes in such information, incorrect functional specification of Third Party Products and/or products delivered by a third party, bad weather conditions, fire, explosions, electricity failures, network failures, floods, illness, lack of staff, strike or other employment conflicts, accidents, actions by the government, not being able to obtain required licenses and/or permits, lack of materials, theft, traffic disruptions, and/or transportation problems.
- 1.9.2. When force majeure is of a temporary nature, DDS has the right to suspend its commitments until force majeure has ceased to exist without being obliged to any form of damage compensation.
- 1.9.3. DDS reserves the right, in the case of force majeure, to collect payment for obligations already fulfilled before force majeure was known.
- 1.9.4. In the event that force majeure of either party surpasses a three month period, either party has the right to terminate the agreement without being obliged to any form of damage compensation regarding such termination.
- 1.10. Nullity**
- 1.10.1. If one or more terms (or part of a term) of the agreement are nullified, declared to be nullified, annihilable, or have lost their validity in another way, the other terms (or part of the term in question) of this agreement will remain in force undiminished.
- 1.10.2. In regard to terms (or part of the term) that are nullified, declared to be nullified, annihilable, or lose their validity in another way, parties shall consult with each other to try to reach a substitute arrangement within which the parties shall strive for the maintenance of this agreement (or the remainder of the term in question) in its totality.
- 1.11. Applicable Law and Dispute Mechanism**
- 1.11.1. All agreements made between DDS and the Customer are governed by the laws of The Netherlands, unless otherwise agreed upon in writing. Parties explicitly agree that the United Nations Convention on Contracts for the International Sale of Goods (CISG) is not applicable.
- 1.11.2. Any disagreement between parties because of any agreement will be solved through arbitration of the Stichting Geschillenoplossing Organisatie en Automatisering (SGOA) (The Dutch arbitration court (foundation) for ICT related matters), in accordance with the SGOA's regulations for arbitration. With the mutual

agreement of both parties, prior to arbitration, parties may try to solve their disagreement through other provisions offered by the SGOA for the settlement of disputes.

- 1.11.3. If the SGOA declares itself unauthorized or if parties mutually agree to such, disagreements will be placed before a qualified court in Maastricht, The Netherlands.
- 1.11.4. The foregoing shall not prevent any party from taking legal procedures, prior to turning to the SGOA, for purposes of sequestration and/or garnish in order to ensue security for its existing rights.

2. DDS PRODUCTS

2.1. User Rights Standard Products

- 2.1.1. The Customer is granted the non-exclusive right to use the Standard Products and corresponding documentation.
- 2.1.2. User rights are limited exclusively to own use of the Standard Products for the agreed upon CPU, number of users, servers, and/or workstations. If nothing is agreed upon, user rights will be limited to the CPU on which the Products were first installed and the number of users, servers, and/or workstations will be limited to 1 (one).
- 2.1.3. User rights for Standard Products are limited to the Object Code. Rights to the Source Code are not provided, unless explicitly agreed upon otherwise in writing.
- 2.1.4. It is prohibited for the Customer directly or indirectly (through a third party) to copy, duplicate, or alter the Standard Products in any way, without the prior written approval from DDS.
- 2.1.5. The Customer is allowed to make one Back-up copy of the Standard Products for safety purposes only, if a Back-up is not provided for by DDS.
- 2.1.6. User rights on the Standard Products cannot be transferred to any third party (third parties also include holding-, sister- and/or subsidiary companies).
- 2.1.7. The Customer does not have the right to make the Standard Products available, under any title or in any way whatsoever, to any third party (third parties also include holding-, sister- and/or subsidiary companies).
- 2.1.8. Reverse engineering or decompilation of the Standard Products is not permitted by the Customer, unless such is explicitly permitted by law.
- 2.1.9. The user rights shall go into effect after the Customer has made the required payments and fulfilled its other obligations.
- 2.1.10. The extent of the user rights on Third Party Products is determined by the Third Party General Conditions as described in article 5. Where the foregoing does not deviate from the Third Party General Conditions, the foregoing will also be applicable.

2.2. Verification

- 2.2.1. DDS is entitled to incorporate technical limitations and control mechanisms in the Standard Products in order to prevent and/or verify that the actual number of users, servers, and/or workstations does not surpass the agreed upon number of users, servers, and/or workstations.
- 2.2.2. DDS is entitled, directly or indirectly, to make unannounced verification visits to the locations where the Standard Products are used as long as the Customer makes use of the Standard Products. The Customer shall provide all necessary cooperation and access. In the event the Customer refuses cooperation and/or access, DDS will be entitled to terminate the agreement immediately. In this event the Customer will no longer be entitled to use the Standard Products and will be obligated to return or destroy any copies made thereof within 30 (thirty) days upon the first request of DDS.
- 2.2.3. If, on the basis of the above described verification procedure or otherwise, it appears that the actual number of users, servers, and/or workstations surpasses the number of users, servers, and/or workstations agreed upon, the Customer will be obligated to immediately acquire the missing number of users, servers, and/or workstations licenses and pay an additional fine of 25% over the amount due. Amounts indebted for Maintenance and Support for the missing users, servers, and/or workstations will be charged from the moment of delivery of the earlier agreed upon number of users, servers, and/or workstations.

2.3. Back-ups

- 2.3.1. Where possible the Customer will be responsible for making the required Back-ups on time. DDS will, upon request, inform the Customer of the procedures and security measures necessary regarding data and the realization of Back-ups.
- 2.3.2. If it is not possible for the Customer to make Back-ups (and it is possible for DDS to make Back-ups) or if it is agreed upon that DDS will provide partially or entirely for the provision of Back-ups, DDS will make the Back-ups. In no event will DDS be liable for these Back-ups for so

far as but not limited to the complete or partial loss of these Back-ups and/or errors in the Back-ups.

2.4. Errors

- 2.4.1. Error(s) means the failure to fulfill the functional specifications set down in writing by DDS and, in cases of developing Custom Work, the functional specifications expressly agreed upon in writing. An Error only exists where such can be demonstrated and reproduced. The Customer is required to immediately report possible Errors to DDS.
- 2.4.2. Every right to repair of Errors lapses if the Products provided by DDS are altered in any way or form.
- 2.4.3. The repair of Errors shall take place at the location to be determined by DDS. DDS is entitled to install temporary solutions, emergency solutions, detours, and/or other problem-avoiding restrictions in the Products.

2.5. Warranty

- 2.5.1. For a period of 3 (three) months (Warranty period), commencing upon acceptance of Custom Work or delivery of Standard Products, DDS shall strive to repair any Errors, as defined in article 2.4.1, to the best of its ability, provided these Errors have been reported in detail in writing to DDS within the Warranty period. At its sole discretion DDS is entitled at its expense to repair, modify, or replace the Products. In the event Errors are a result of a service, DDS will provide alternative services.
- 2.5.2. DDS is entitled to invoice its usual prices and the costs for repair, modification, or replacement of the Products if the Error may be said to be caused by mistakes made by the Customer, the result of improper and non-careful use by the Customer, the result of other causes that may not be attributed to DDS or if the Customer could have reasonably detected the Error during the acceptance period.
- 2.5.3. The Warranty does not cover the reconstruction and/or repair of mutilated and/or lost data and/or information. DDS does not warrant that the Products shall function without interruption or without Errors, are suitable for every intended use of the Customer, and/or will lead to results desired by the Customer during or after the Warranty period. The Warranty obligation is void if the Customer alters the Products, or has them altered, without the written permission of DDS.
- 2.5.4. After termination of the Warranty period, DDS shall not be bound to repair, modify, and/or replace the Products, unless parties have agreed otherwise.
- 2.5.5. The Warranty provided on Third Party Products is limited to the Third Party General Conditions as maintained by the supplier of Third Party Products as described in article 5.

2.6. Maintenance

- 2.6.1. DDS offers the Customer, depending on the Products delivered, the option of acquiring Maintenance. Maintenance on the Products is based on a periodic Advance.
- 2.6.2. Maintenance includes providing updates and documentation of the Products delivered to the Customer, which either contain a qualitative (e.g. Error fix) or a functional improvement of the Product. DDS is not obliged to actively keep the Customer up to date concerning possible updates of the Products.
- 2.6.3. If Maintenance results in a functional improvement, DDS will have the right to charge extra payment to compensate for this functional improvement.
- 2.6.4. DDS is authorized to refuse the provision of Maintenance if the Standard Products provided by DDS or the environment in which the Standard Products operate are altered by the Customer in any way or form.
- 2.6.5. If the Customer refuses to install updates of the Products that are offered by DDS to the Customer then DDS reserves the right to terminate the agreement or to adjust the agreement in accordance with the refusal to install updates.

2.7. Support

- 2.7.1. Support consists of providing verbal (telephonic) and written (e-mail) advice concerning the use and operation of Products. Support is initially based on a periodic Advance. On the basis of this periodic Advance, the Customer is entitled to the response hours as indicated in the agreement. If the number of hours entitled to be exceeded, the applicable hourly rate will be charged.
- 2.7.2. DDS will only provide Support on the most current updates of the Products. DDS is entitled at its sole discretion to provide Support on older versions, releases, etc. of the Products.

2.8. Project Management

- 2.8.1. Project management involves managing, coordinating, and advising a Customer with regard to a further to be specified project.

2.8.2. Project management is performed by DDS on the basis of these General Conditions DDS and further to be specified terms and conditions.

2.9. Advice

2.9.1. All Products that can be considered advice or which can be described as advice will only be given to the best of DDS' s knowledge and capability.

2.9.2. DDS is not responsible and/or liable if the activities that flow forth from advice result in a failure to carry out a project for the Customer within allocated budgets, time schedules, and other agreed upon conditions.

2.9.3. DDS will provide advice on the basis of the conditions required by DDS and information received from the Customer as mentioned in article 1.5. If it appears that not all relevant information has been received and/or other problems and/or insights may arise, such as but not limited to incompatibility problems (products are unable to interoperate with each other), the given advice may be adjusted to the new circumstances.

2.10. Activities

2.10.1. All activities will take place without interruption on Workdays and under normal working conditions.

2.10.2. For every continuous period within which DDS performs activities for less than 3 (three) hours at a location other than at DDS's place of business, DDS will be entitled to charge the Customer for a minimum of 3 (three) hours.

2.10.3. Activities that are performed outside of Workdays are considered as overtime. The applicable rate will be increased with 50% for overtime after or before Workdays. The applicable rate will be increased with 100% for overtime on weekends and public holidays.

2.10.4. If it is agreed upon that activities will take place in phases, DDS will be entitled to postpone activities that belong to the next phase until the Customer has accepted in writing activities performed in the previous phase.

2.10.5. Only if agreed upon explicitly in writing will DDS be obligated when performing activities to follow timely and reasonable instructions given. DDS is not obligated to follow instructions that will alter the content or scope of the agreed upon activities. In the event such instructions are followed, the activities performed will be charged on the basis of Subsequent Calculation.

2.10.6. DDS is entitled, without the explicit consent of the Customer, to make use of third parties when performing activities.

2.11. Additional Work

2.11.1. If, in the opinion of DDS, a change request by the Customer is in fact a request for additional work, DDS will notify the Customer thereof prior to performing additional work. Upon request by the Customer, the notification will be followed by a specification of the price and additional conditions. The Customer will decide as soon as possible whether to carry out the additional work.

2.11.2. It will be assumed that the Customer has agreed to the performance of additional work and the connected costs, if the Customer has allowed additional work to take place without raising objections in writing prior to the commencement of additional work.

3. DEVELOPMENT

3.1. Custom Work

3.1.1. All assignments consisting wholly or partially of Custom Work are billed on the basis of Fixed Price or Subsequent Calculation.

3.1.2. Parties shall specify in writing what Custom Work will be developed and how this shall be done. DDS will carry out the Custom Work development activities with due care on the basis of information provided by the Customer, for which information the Customer ensures the accuracy, completeness, and consistency.

3.1.3. DDS is authorized, but not obliged, to investigate the correctness, completeness, and/or consistency of the data or specifications provided to DDS and, in case it is determined that there is inaccuracy, incompleteness, or inconsistency, to suspend activities until such time as the Customer has remedied the deficiencies.

3.1.4. Unless agreed upon otherwise in writing, the intellectual property rights, industrial property rights, and other rights in Custom Work shall be transferred to the Customer in accordance with article 7.3.

3.2. Feasibility Study

3.2.1. A Feasibility Study is an investigation which can be carried out by DDS prior to performance of Custom Work. The objective of the Feasibility Study is to inform the Customer at an early stage as to the feasibility of the assignment.

3.2.2. Based on the findings resulting from the Feasibility Study, DDS will provide a positive or negative advice concerning the feasibility of the assignment. A positive advice usually

implies that DDS will then carry on with the development activities. A negative advice implies that DDS will decline the assignment with cause and will provide an alternative where possible.

3.2.3. The costs for the Feasibility Study will always be born by the Customer regardless of the results of the Feasibility Study.

3.3. Acceptance Procedure

3.3.1. An acceptance period shall only be applicable if agreed upon in writing. If agreed upon in writing, the following acceptance procedure shall be applicable. An acceptance procedure shall only be applicable with regard to releases of Custom Work and not iterations.

3.3.2. The acceptance period for the Customer runs for 10 (ten) Workdays immediately following delivery of the Custom Work. During the acceptance period, the Customer is not permitted to use the Custom Work for production and/or operational purposes.

3.3.3. The Custom Work shall be considered by both parties as accepted:

a) on the first day following the acceptance period, or
b) when DDS, before the end of the acceptance period, receives a test report (article 3.3.6): at the moment that the Errors identified in that Test Report have been repaired, notwithstanding the presence of small Errors which according to article 3.3.7 do not hinder acceptance.

3.3.4. If the Custom Work is delivered in phases, and/or parts are delivered and tested, the non-acceptance of a particular phase and/or part will not delay the acceptance of an earlier phase and/or another part.

3.3.5. In deviation to the previous, the Custom Work shall be considered as accepted from the beginning of any use when the Customer uses the Custom Work in any manner before the moment of acceptance for productive or operational purposes.

3.3.6. If it becomes apparent during the acceptance period that the Custom Work contain Errors which hinder the progress of the acceptance test, the Customer shall inform DDS no later than the last day of the acceptance period in a written and as detailed as possible test report of the Errors, in which case the still remaining acceptance period will be interrupted until such time as the Custom Work is so modified that the Errors are removed.

3.3.7. Acceptance of Custom Work may not be withheld on grounds other than those which are related to specifications which have been expressly agreed upon between the parties nor, furthermore, due to the presence of small Errors which do not reasonably impede putting the Custom Work into productive or operational use.

3.4. Development Environment

3.4.1. The Customer is required to follow instructions given by DDS regarding access to the Development Environment.

3.4.2. DDS will inform the Customer prior to the commencement of any planned down time of the Development Environment. DDS will attempt to have the Development Environment available to the Customer as much as reasonably possible, however, DDS does not have any obligations with regard to availability, reliability and/or other performance requirements with regard to the Development Environment.

3.4.3. DDS will strive, in accordance with the most current technology available, to provide adequate physical and logical security measures against unauthorized access by third parties to the Development Environment.

3.4.4. The Development Environment is accessible by the Customer through a browser. DDS will inform the Customer as to which browser is required.

3.4.5. DDS will make Identification Codes available to the Customer for access to the Development Environment. The Customer will use these Identification Codes with care and notify DDS in the event of loss, theft, and/or any other form of unauthorized use, in order to enable parties to take the proper actions.

3.4.6. The Customer carries all responsibility, liability, and costs related to the use of Identification Codes. If there is a reasonable suspicion of misuse or unauthorized use of Identification Codes, DDS can provide the Customer with the necessary instructions, which must be carried out.

4. DELIVERY

4.1. Delivery

4.1.1. DDS shall deliver the Products to the Customer in accordance with the specifications established in writing by DDS and, if desired by the Customer, install them.

4.1.2. The delivery of services by or through DDS takes place at the place and time that the services are performed.

4.2. (Delivery) Dates

4.2.1. All (delivery) dates which may be named by and may be applicable to DDS are determined to the best of DDS's knowledge on the basis of information made known to

- DDS and will be taken into consideration as much as possible.
- 4.2.2.** (Delivery) dates shall therefore not be considered to be absolute (delivery) dates within which must be delivered, but a time period within which DDS shall strive with best efforts to deliver the agreed upon items. If it is not possible to keep to the (delivery) date, then DDS and the Customer will consult with each other to agree on a substitute (delivery) date.
- 4.2.3.** Exceeding a given (delivery) date which may be applicable never constitutes an attributable shortcoming by DDS. DDS does not accept liability under any circumstances in cases where the (delivery) date may be exceeded.
- 4.3. Risk**
- 4.3.1.** From the moment of delivery the Customer will bear the risk of the Products delivered even if possible ownership and user rights have not yet been transferred. As a result the Customer will be held accountable for full payment of the Products delivered regardless of the situation that the Products delivered have perished or that their value has declined due to circumstances for which DDS cannot be held accountable.
- 4.3.2.** The aforementioned will also be applicable from the moment in which the Customer does not make it possible for DDS to make a delivery.
- 4.4. Installation and Implementation**
- 4.4.1.** DDS will install and/or implement the Products or have them installed and/or implemented if agreed upon in writing.
- 4.4.2.** Prior to installation and/or implementation the Customer will see to it, at its own expense, that all conditions required by DDS have been met in order to ensure a successful installation and/or implementation.
- 4.4.3.** The Customer will ensure and is entirely responsible for obtaining the necessary Third Party General Conditions in order to let installation and/or implementation take place legally.
- 4.4.4.** If, due to the Customer's fault, implementation and/or installation has not been performed within the agreed upon time schedule, the Customer will make payments as if implementation and/or installation has been performed, undiminished the obligations of DDS to proceed with installation and/or implementation at a later time period.
- 4.5. Replacement Performance**
- 4.5.1.** DDS is permitted to deliver alternative Products than those Products ordered by the Customer if the performance and operation of such alternative Products is essentially no different from the Products ordered.
- 4.5.2.** If the agreement is closed with the objective of having activities carried out by a particular individual, DDS will be entitled to replace this person with another person with the same qualifications.
- 5. THIRD-PARTY PRODUCTS**
- 5.1. Third Party Products**
- 5.1.1.** DDS has the right to deliver Third Party Products or make use of Third Party Products in fulfilling its obligations that may flow forth from the agreement. DDS is not responsible for Third Party Products, unless agreed upon otherwise in writing.
- 5.1.2.** If DDS delivers Third Party Products to the Customer, the Third Party General Conditions will be applicable to the agreement in addition to these General Conditions DDS.
- 5.1.3.** DDS will deliver rights regarding Third Party Products under the same conditions as given in the Third Party General Conditions.
- 5.1.4.** No Maintenance, Support or other services will be carried out by DDS on Third Party Products, unless agreed upon otherwise in writing.
- 5.2. Third Party General Conditions**
- 5.2.1.** Third Party General Conditions that are declared applicable in these General Conditions DDS shall, when available to DDS, be provided on request. Third Party General Conditions will be delivered in the same format and language as received by DDS.
- 5.2.2.** The General Conditions DDS have priority over the Third Party General Conditions unless indicated otherwise. When there is conflict between the General Conditions DDS and the Third Party General Conditions, DDS has the right to declare the conflicting terms of the Third Party General Conditions non-applicable or applicable.
- 6. PRICES/PAYMENTS**
- 6.1. Prices and Payments**
- 6.1.1.** All prices exclude VAT and other levies imposed by the government. The amounts invoiced to the Customer will include applicable VAT and other levies possibly imposed by the government.
- 6.1.2.** DDS will invoice the amount, appropriately itemized, owed by the Customer on a monthly basis to the Customer. The Customer will pay all amounts indebted within 10 (ten) days of the invoice date. These payments will not be subject to compensation or deduction other than when permitted by law.
- 6.1.3.** Should the Customer fail to fulfill any payment obligation, the Customer is in breach without any further notification of breach being required. DDS reserves the right to charge all incurred costs to the Customer, including judicial and extra-judicial expenses, with regard to the collection of debts from the Customer. Extra-judicial collection costs amount to 15% of the debt, with a minimum of Euro 500,- (five hundred). In any case, the Customer will be charged interest on a monthly basis, at the legal percentage rate, on all outstanding debts starting from the date of failure to pay.
- 6.1.4.** Until full payment has been made, DDS has the right to suspend all services and obligations to the Customer. The Customer's obligation to meet the Customer's commitments remains unchanged.
- 6.1.5.** If DDS is unable to make a delivery in time due to the Customer, DDS will have the right to charge a 1,5% interest reimbursement on a monthly basis over the indebted amount.
- 6.1.6.** Compensation for Maintenance, Support and any other annual or periodic amounts are due as an Advance at the moment of realization of the agreement between the parties and shall be billed to the Customer, appropriately itemized, prior to each year or other period that the agreement between parties continues.
- 6.1.7.** The indebted amount in article 6.1.1 may be increased with order costs, postage costs, and costs of third parties. An increase can also take place in the event that activities have to take place outside of DDS's office. In the event that activities need to take place outside of DDS's office, hourly rates, travel and waiting time compensations, actual travel and/or kilometer compensation, hotel expenses, and any other costs connected to such services will be charged. The travel and waiting time compensation amounts to 50% of the current hourly rate. The means of transportation will be determined by DDS. The foregoing is also applicable on services provided outside of The Netherlands.
- 6.1.8.** Above mentioned paragraphs leave all the legal rights of DDS unhindered when the Customer fails to meet the Customer's payment commitments.
- 6.2. Price Changes**
- 6.2.1.** The prices agreed to between DDS and the Customer are among other things based on the costs of salaries, social premiums, materials, and travel and accommodation costs, etc., as well as the rate of exchange between the currencies as applicable at the time of closing of the agreement. DDS is authorized, in case of changes to one or more of the cost items and/or changes in the rate of exchange to adjust the prices to these changes.
- 6.2.2.** DDS will offer the Customer the possibility to become acquainted with possible changes in prices. If the Customer does not agree with a price change, the Customer will only be permitted to terminate the agreement from the date the change in price becomes applicable, if the total price increase during 1 (one) year exceeds the yearly inflation rate of the current year (or previous year for price increases announced for the next year) as published by the CBS (Dutch Bureau for Statistics) by 5%.
- 6.3. Fixed Price**
- 6.3.1.** In the case of a Fixed Price agreement, activities will be performed on the basis of a prior agreed upon price.
- 6.3.2.** Unless DDS can appeal to article 1.5.4 extra hours will not be charged.
- 6.4. Subsequent Calculation**
- 6.4.1.** When charges are to be based on Subsequent Calculation, this means that prior to DDS commencing the agreed activities a global estimate can be made of the expected costs. On conclusion of the activities carried out, all costs actually incurred related to the activities will be calculated and charged. The Customer is, then, aware that there is a possibility that the estimate made earlier could be lower than the costs actually incurred. If no agreements have been made regarding billing, activities will be performed on the basis of Subsequent Calculation.
- 6.5. Advance**
- 6.5.1.** DDS has the right to charge payments in Advance. If full payment of the Advance is not made, DDS has the right, undiminished its other rights that may flow forth from the agreement, to suspend all its obligations and all amounts owned by the Customer will be immediately due.

7. INTELLECTUAL PROPERTY RIGHTS

7.1. Rights of the Customer and DDS

- 7.1.1. DDS has the exclusive right to further develop the Standard Products and place them at the disposal of third parties by means of licenses.
- 7.1.2. The Customer acknowledges that all present and future intellectual property rights, industrial property rights, other rights with regard to the Standard Products and the registration and/or application of the foregoing rights and/or similar rights for the whole term thereof and all renewals or extensions thereof, now or at any time in the future worldwide at all times shall be and are hereby assigned or will be transferred to DDS.
- 7.1.3. The Customer is not permitted, directly or indirectly, to remove or alter any designation concerning intellectual property rights, industrial property rights, other rights, trademarks, and trade names from the Products.
- 7.1.4. In the event that DDS, the Customer, or a third party makes functional improvements or other adjustments in the Products the intellectual property rights, industrial property rights and other rights vested in the improved or adjusted Product will remain unchanged with DDS or the rightful third party. If the above mentioned rights do not belong to DDS or the rightful third party, the Customer will cooperate in transferring the above mentioned rights to DDS or the rightful third party.
- 7.1.5. All intellectual property rights, industrial property rights, or other rights of documentation will remain with DDS. The Customer is explicitly not permitted to duplicate and/or transfer such to a third party for permanent or temporary use. The Customer will ensure that its employees and/or third parties will comply to the foregoing obligation.

7.2. Indemnification

- 7.2.1. DDS shall protect the Customer from any allegation to the effect that the Standard Products violate a copyright valid in the European Union. DDS shall pay the damages, expenses, and court costs that the Customer is ordered to pay by the final court ruling, provided that the Customer:
 - a) notifies DDS immediately, but no later than within 10 (ten) days, after the Customer becomes aware of the infringement or could have become aware of the infringement, in writing of the existence of the allegation of infringement; and
 - b) gives the case completely over to DDS, including all negotiations and arrangements that might lead to a settlement. In case of any such allegation or possible allegation, DDS reserves the right to obtain a license or sub-license on the Standard Product in question or to change or replace the Standard Product in such a way that the Standard Product will no longer infringe a copyright valid in the European Union. If, at DDS's sole judgment, the foregoing remedies are not a reasonable option, DDS has the right to take the delivered Standard Product back against reimbursement of payments made for the Standard Product in question, minus a reasonable compensation for having made use of the Standard Product.
- 7.2.2. DDS shall not indemnify the Customer against an action in the event that:
 - a) such is based on the fact that the Third Party Products provided to the Customer violate an intellectual property right, industrial property right, or other right valid in the Netherlands or elsewhere;
 - b) what is provided by the Customer is part of or is delivered in conjunction with a Product and this combination results in a violation of an intellectual property right, industrial property right, or other right valid in the Netherlands or elsewhere;
 - c) the Customer has made a change in or to the Product.

7.3. Custom Work

- 7.3.1. DDS warrants that DDS as maker of the Custom Work owns all copyright (including moral rights) in the Custom Work.
- 7.3.2. DDS transfers all current and future intellectual property rights in the Custom Work to the Customer.
- 7.3.3. DDS transfers, as far as possible, all intellectual property rights, including all authority, competency, and title currently or yet to be permitted by law, to all adaptations in the Custom Work exclusively to the Customer.
- 7.3.4. The transfer of the intellectual property rights in Custom Work to the Customer is provided under the suspended condition that the Customer pays the agreed compensations fully and timely. In case of failure to pay, the Customer must return the Custom Work to DDS at the Customer's expense within one week of receiving the instruction from DDS to do so. All other remedies in law remain applicable.
- 7.3.5. The Customer will indemnify DDS against any action insofar as such is based on the fact that the Custom Work

transferred to the Customer, or a part thereof, violates an intellectual property right, industrial property right or any other right belonging to a third party.

- 7.3.6. If the Customer, for the execution of an agreement, makes material available such as but not limited to raw materials, accessory materials, drawings and software to DDS, these materials shall remain property of the Customer. DDS will keep these materials with due care and clearly separate such from materials not belonging to the Customer. These materials must be immediately returned upon completion of the agreement or the delivery to which they pertain.