

# GENERAL CONDITIONS

**WtR Software B.V.**



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## 1. GENERAL

### 1.1 Definitions

1.1.1 In the General Conditions *WtR Software B.V.* the following words and expressions are used with a capital. Any of the following words and expressions shown in the singular shall have the same meaning when used in the plural and vice-versa.

1.1.2 Advance:

As further described in article 7.5.

1.1.3 Back-up:

Spare copies of digital data and/or information.

1.1.4 Customer:

Anyone who requests and orders the delivery of Products.

1.1.5 Courses:

Courses shall also include trainings and related activities.

1.1.6 Fixed Price:

As further described in article 7.3.

1.1.7 Maintenance:

As further described in these General Conditions.

1.1.8 WtR Software B.V.:

*WtR Software B.V.* and its rightful successors or affiliated organizations and partners that will enter into an agreement with Customer and has declared the General Conditions *WtR Software B.V.* applicable.

1.1.9 WtR Software B.V. Products:

All products and services provided by *WtR Software B.V.* 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 *WtR Software B.V.*

1.1.10 Products:

All *WtR Software B.V.* Products and/or Third Party Products provided by *WtR Software B.V.*, the resulting provisions and related activities.

1.1.11 Staff:

Employees in the service of *WtR Software B.V.* and/or employees in the service of a third party hired by *WtR Software B.V.*

1.1.12 Subsequent Calculation:

As further described in article 7.4.

1.1.13 Support:

As further described in these General Conditions.

1.1.14 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.

1.1.15 Third Party Products:

All products and services provided by *WtR Software B.V.*, 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 *WtR Software B.V.*

1.1.16 Workdays:

Normal working hours (8.00-18.00) and days (Monday through Friday) with the exception of public and religious holidays.

### 1.2 Applicability

1.2.1 These conditions are applicable to all proposals and/or deliveries made by *WtR Software B.V.* and agreements and/or other legal relationships between *WtR Software B.V.* and 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.

1.2.2 **Purchase conditions or any other conditions used by Customer will not be applicable.** The applicability of purchase conditions or any other conditions from Customer or from third parties on behalf of Customer is therefore expressly rejected by *WtR Software B.V.*, unless explicitly accepted in writing by *WtR Software B.V.*

1.2.3 The General Conditions *WtR Software B.V.* are filed with the Office of the North-Netherlands, Court location Groningen.

1.2.4 *WtR Software B.V.* reserves the right to make alterations and/or additions to the General Conditions of *WtR Software B.V.* The modified General Conditions *WtR Software B.V.* will become applicable, unless objections against modifications are made in writing within 30 (thirty) days of the notification date of the change.

1.2.5 Changes in and additions to the General Conditions *WtR Software B.V.* and/or agreements made between *WtR Software B.V.* and Customer are only valid when agreed to by *WtR Software B.V.* in writing.

1.2.6 If 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 *WtR Software B.V.*

The headings above the articles of these conditions 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.

### 1.3 Confirmation

1.3.1 Verbal agreements, assignments, or other expressions of whatever nature by employees of *WtR Software B.V.* are only valid and binding when they have been confirmed in writing by authorized representatives of *WtR Software B.V.*

### 1.4 Offers

1.4.1 All offers made are without engagement, unless the offer explicitly indicates otherwise in writing.

1.4.2 Offers are based on the data, information, or requirements made known by Customer as set out in article 1.6.

### 1.5 Agreements

1.5.1 If a proposal, contract, or other similar legally binding document is sent by *WtR Software B.V.* to Customer and Customer fails to return this document, signed, to *WtR Software B.V.*, Customer accepts by payment of compensation to *WtR Software B.V.* the contents of this document and the General Conditions *WtR Software B.V.*

1.5.2 An agreement between *WtR Software B.V.* and 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.

1.5.3 Termination of the agreement as described in article 1.5.2 occurs by means of a registered letter, which must be received by the other party no later than 40 (forty) days prior to the expiration date of the agreement.

1.5.4 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, they then fail to meet the aforesaid obligations within a reasonable period of time.

1.5.5 *WtR Software B.V.* 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 Customer is a person and becomes deceased, if Customer submits a legal request for debt restructuring, if bankruptcy or suspension of payment has been filed for Customer, if Customer is in a state of bankruptcy or suspension of payment has been granted, or if Customer's company is liquidated or ended for any reason other than reconstruction or company merger. In these cases, any claim by *WtR Software B.V.* will be immediately due.

1.5.6 After the agreement has been ended, for any reason, Customer 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 competition clause.

### 1.6 Co-operation/Information Requirements For Customer

1.6.1 All assignments are carried out by *WtR Software B.V.* on the basis of data, information, requests, and/or requirements made known to *WtR Software B.V.* by Customer.

1.6.2 Customer shall provide all necessary cooperation to *WtR Software B.V.* and shall make known in time all useful and necessary data and/or other information required for an adequate execution of the agreement. Customer shall ensure the accuracy of this data and/or other information.

1.6.3 If data, information and/or other requirements necessary for the execution of the agreement are not, not in time, and/or not in accordance with the agreements, made available to *WtR Software B.V.* or if Customer fails to meet its obligations in any other way; *WtR Software B.V.* has in any case the right to terminate or dissolve the agreement or to suspend execution of the agreement and *WtR Software B.V.* has the right to charge the costs incurred at its usual rates.

1.6.4 If changes and/or new facts arise in regard to data, information, requests, and/or requirements provided earlier, *WtR Software B.V.* will always be fully justified, in consultation with Customer, to adjust the agreement to these new circumstances or to dissolve or annul the agreement.

1.6.5 If Customer makes functional improvements or any other adjustments in the Products (after first having received the written permission from *WtR Software B.V.*, as further described in article

- 2.1.2), Customer is obliged to report such adjustments to *WtR Software B.V.*, in the event that *WtR Software B.V.* provides Maintenance, Support, or any other services with regard to Products provided to Customer.
- 1.6.6** In the event *WtR Software B.V.* performs activities in a location other than its own, Customer will be responsible for providing free of charge reasonable requested facilities, such as office space and telecommunication facilities.
- 1.7 Confidentiality/Non-competition**
- 1.7.1** *WtR Software B.V.* and 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 or for Customer's clients. Data and information may only be used in order to carry out the agreement between parties.
- 1.7.2** *WtR Software B.V.* is authorized to place the name and logo of Customer or Customer's clients who are given rights to the Products on the *WtR Software B.V.* website and/or reference list and to make them available to a third party for information.
- 1.7.3** Customer and its clients will not enter into any direct or indirect commercial, employment, or other such relation with employees of *WtR Software B.V.* during the agreement and for a period of 12 (twelve) months after termination or dissolution of the agreement, without the written consent of *WtR Software B.V.* Customer will ensure that its clients will comply with the foregoing obligation.
- 1.7.4** In the event that Customer breaches article 1.7.3, Customer will be charged, without further notification required, a fine of Euro 50,000.00 (fifty thousand) for each breach, undiminished the right of *WtR Software B.V.* to claim full compensation for damages incurred.
- 1.8 Liability**
- 1.8.1** *WtR Software B.V.*' total liability due to culpable failure to fulfill the agreement, shall be limited, in accordance with articles 1.8.2 and 1.8.3, to compensation for direct damage and to a maximum of the amount of the price stipulated in the agreement (excluding VAT) to a maximum of Euro 125,000.00 (one hundred and twenty five thousand), whereby a sequence of events is regarded as one event.
- 1.8.2** If the agreement also includes an agreement over time with a term of more than 1 (one) year and *WtR Software B.V.*' liability is a result of the agreement over time, the stipulated price will be calculated on the basis of the total amount (excluding VAT) as actually paid by Customer to *WtR Software B.V.* on the basis of the agreement over time for 1 (one) year (this being the year in which the damage occurred) to a maximum of Euro 125,000.00 (one hundred and twenty five thousand).
- 1.8.3** *WtR Software B.V.* has insured itself against damage. *WtR Software B.V.* is in any case not liable for further damage and will not compensate for any further damage which Customer may suffer on the basis of the agreement entered into with *WtR Software B.V.*, however caused, including possible claims of liability against Customer by third parties, than is covered and actually compensated for by the insurance, except in case of malicious intent (opzet) or reckless disregard (bewuste roekeloosheid).
- 1.8.4** Direct damage is exclusively understood as:
- The reasonable costs that Customer needs to make in order to make the performance of *WtR Software B.V.* conform with the agreement. This damage is not compensated if Customer has dissolved the agreement.
  - The reasonable costs made in determining the cause and extent of the damage;
  - The reasonable costs incurred in prevention or limitation of damage to the degree that Customer can demonstrate that these costs have led to the limitation of the damage.
- 1.8.5** *WtR Software B.V.*' 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 Customer to provide the required information or assistance, damage through corporate inactivity, and/or claims from third parties against Customer, is expressly rejected.
- 1.8.6** With the exception of the case named in article 1.8.1, *WtR Software B.V.* has no liability for damage compensation regardless of what an action towards compensation could be based upon.
- 1.8.7** *WtR Software B.V.*' liability exists solely when Customer immediately and appropriately notifies *WtR Software B.V.* of the deficiency in writing, proposing therein a reasonable time period for correction of the deficiency and *WtR Software B.V.* 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 *WtR Software B.V.* is able to react adequately.
- 1.8.8** The condition for the existence of any right to compensation is always that Customer notifies *WtR Software B.V.* 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.
- 1.8.9** Customer indemnifies *WtR Software B.V.* from all liability regarding third parties due to allegations as a consequence of deficiency in a product, system, or service provided by Customer to third parties that consisted of a delivery made by *WtR Software B.V.*
- 1.8.10** *WtR Software B.V.* does not accept any liability for damage regardless of its nature caused by Third Party Products which *WtR Software B.V.* has delivered to Customer. If possible *WtR Software B.V.* will transfer its rights for damage compensation from the supplier of the Third Party Product in question to Customer.
- 1.8.11** *WtR Software B.V.* is not liable for any damage regardless of its nature, which is the result of a failure to provide Support and Maintenance on time.
- 1.8.12** If *WtR Software B.V.*, when executing a project, doubts if the results of the activities comply with the applicable laws and regulations, such as but not limited to Law Misleading Advertising (Wet misleidende Reclame), Privacy Regulations (Wet bescherming persoonsgegevens), Dutch Advertising Code (Nederlandse Reclame Code), e-commerce law, and rules regarding distance selling (verkoop op afstand), *WtR Software B.V.* will indicate such. If Customer approves a project proposal, Customer will indemnify *WtR Software B.V.* from all claims from third parties.
- 1.8.13** Customer shall indemnify *WtR Software B.V.* from all damage claims from third parties regarding the correctness and/or lawfulness of the actual content of communication expressions produced on behalf of Customer and/or other materials that have been submitted to *WtR Software B.V.*
- 1.8.14** *WtR Software B.V.* is not liable for damage, loss, or destruction of materials or data, which have been made available by or on behalf of Customer to *WtR Software B.V.* The transportation of goods is at the risk of Customer.
- 1.9 Transfer**
- 1.9.1** The agreement between *WtR Software B.V.* and Customer and the rights and obligations, which flow forth from this agreement, cannot be transferred to a third party by Customer without the prior written consent from *WtR Software B.V.*
- 1.10 Force Majeure**
- 1.10.1** 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 *WtR Software B.V.*' power as well as business risks of *WtR Software B.V.*, these include but are not limited to failure to perform by a supplier of *WtR Software B.V.*, the late or non-availability 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.
- 1.10.2** When force majeure is of a temporary nature, *WtR Software B.V.* has the right to suspend its commitments until force majeure has ceased to exist without being obliged to any form of damage compensation.
- 1.10.3** *WtR Software B.V.* reserves the right, in the case of force majeure, to collect payment for obligations already fulfilled before force majeure was known.
- 1.10.4** 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.
- 1.11 Nullity**
- 1.11.1** If one or more terms (or part of a term) of the agreement are nullified, declared to be nullified, annihilaable, 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.
- 1.11.2** In regard to terms (or part of the term) that are nullified, declared to be nullified, annihilaable, 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.

## 1.12 Applicable Law and Dispute Mechanism

- 1.12.1 All agreements made between *WtR Software B.V.* and Customer are governed by the laws of The Netherlands whereby parties explicitly agree that the United Nations Convention on Contracts for the International Sale of Goods (CISG) is not applicable, unless otherwise agreed upon in writing.
- 1.12.2 Any disagreement between parties that cannot be solved by consultation shall be placed before a qualified court in Amsterdam, The Netherlands.

## 2. *WtR Software B.V.* PRODUCTS

### 2.1 User Rights Products

- 2.1.1 Customer is granted the non-exclusive right for the agreed upon use of the Products. If nothing is agreed upon then the first use will constitute what has been agreed upon.
- 2.1.2 It is prohibited for Customer and/or for a third party on behalf of Customer to alter the Products in any way, without having received the prior written approval from *WtR Software B.V.*
- 2.1.3 User rights on the Products cannot be transferred to any third party (third parties also include foreign holding, sister and/or subsidiary companies).
- 2.1.4 The user rights shall go into effect after Customer has made the required payments and fulfilled its other obligations.
- 2.1.5 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 Custom Work

- 2.2.1 All assignments consisting wholly or partially of custom work are invoiced on the basis of Fixed Price or Subsequent Calculation.
- 2.2.2 Parties shall specify in writing what *WtR Software B.V.* Product will be developed and how this shall be done. *WtR Software B.V.* will carry out the *WtR Software B.V.* Product development activities with due care on the basis of information provided by Customer.
- 2.2.3 The development of custom work takes place according to the following primary phases:  
a) Strategic development;  
b) Concept development;  
c) Realization phase.  
If Customer does not wish to follow the foregoing phases, this will be at the risk (and expense) of Customer.
- 2.2.4 Following contact between Customer and *WtR Software B.V.*, a report, such as but not limited to "briefing" and meeting minutes, may be provided to Customer. If Customer does not explicitly notify *WtR Software B.V.* in writing of any incorrectness in the report within 2 (two) Workdays after the report has been sent to Customer, the report and its contents will be deemed to be approved and accepted by Customer. If the matter is urgent, *WtR Software B.V.* may require the Customer to immediately approve or disapprove of the report.
- 2.2.5 A deviation of 10% in the prices mentioned will be deemed to be accepted by Customer and will not require further notification to and/or approval by Customer.
- 2.2.6 Intellectual property rights, industrial property rights, and other rights to custom work remain at all times with *WtR Software B.V.*, as described in article 8.1.

### 2.3 Advice/Consultancy

- 2.3.1 All Products that can be considered advice or which can be described as advice, such as but not limited to Consultancy, will only be given to the best of *WtR Software B.V.*' knowledge and capability.
- 2.3.2 *WtR Software B.V.* is not responsible and/or liable if the activities that follow forth from advice result in a failure to carry out Customer's project within allocated budgets, time schedules, and other agreed upon conditions.
- 2.3.3 *WtR Software B.V.* will provide advice on the basis of the conditions required by *WtR Software B.V.* and information received from Customer as mentioned in article 1.6. If it appears that not all relevant information has been received and/or other problems and/or insights may arise, the given advice may be adjusted to the new circumstances.

### 2.4 Outplacement

- 2.4.1 Personnel of *WtR Software B.V.* can be made available to Customer or Customer's clients on a temporary basis.
- 2.4.2 Outplacement is performed by *WtR Software B.V.* on further to be specified terms and conditions and will only take place under the supervision and responsibility of Customer or Customer's clients

and on the basis of conditions as further specified in article 3.

## 2.5 Activities

- 2.5.1 Any activities will take place without interruption to the best of *WtR Software B.V.* ability and on Workdays and under normal working conditions.
- 2.5.2 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 and religious holidays.
- 2.5.3 If it is agreed upon that activities will take place in phases, *WtR Software B.V.* will be entitled to postpone activities that belong to the next phase until Customer has accepted in writing activities performed in the previous phase.
- 2.5.4 *WtR Software B.V.* is entitled, without the explicit consent of Customer, to make use of third parties when performing activities.

## 3. OUTPLACEMENT

### 3.1 General

- 3.1.1 If possible *WtR Software B.V.* is willing to make Staff available to Customer under the conditions as set out in article 3, unless agreed upon otherwise in writing (in the order specification).
- 3.1.2 In a separate order specification, parties will specify the information regarding the relevant Staff member(s) and the work to be carried out by the Staff member(s).
- 3.1.3 Article 3 applies to all agreed upon order specifications between *WtR Software B.V.* and Customer and possible extensions.
- 3.1.4 Staff made available by *WtR Software B.V.* will carry out the activities under supervision and responsibility of Customer and/or Customer's clients. Customer will only provide Staff to Customer's clients, if this has been explicitly agreed upon in writing and under the same conditions as agreed upon with Customer.
- 3.1.5 At the moment Customer submits a request for Staff, *WtR Software B.V.* only has the responsibility to make Staff available, on a best effort basis.
- 3.1.6 *WtR Software B.V.* will ensure that the Staff made available to Customer comply with the level of education, expertise and experience agreed upon in writing. Customer is only entitled to set specific requirements in advance with regard to the level of education, expertise and experience of Staff, if this is reasonable in light of the level and nature of the activities to be performed. Specific requirements will be included in the order specification.
- 3.1.7 If the Staff member is an employee of *WtR Software B.V.*, *WtR Software B.V.* shall not terminate the employment or act in any other way that can or may result in the termination of the employment during the duration of the order specification. In the event there is a urgent reason (dringende reden) as defined in article 7:677 BW (Dutch Civil Code) and/or an important reason (gewichtige reden) in light of what has been determined in article 7:685 BW (Dutch Civil Code), *WtR Software B.V.* is entitled to give the Staff member an immediate notice of termination of the employment (ontslag op staande voet) or to submit a request for the termination of the employment agreement with the qualified court. With regard to the replacement of the Staff member, article 3.1 will apply.
- 3.1.8 If the Staff member is not an employee of *WtR Software B.V.*, but performs activities for Supplier on the basis of a different agreement, *WtR Software B.V.* shall not terminate the agreement with such third party prematurely or end it in any other way, except for in the event:  
a) that the third party does not meet its commitments, even after having been given a reasonable term to meet its commitments;  
b) of bankruptcy or suspension of payments by the third party; and/or  
c) liquidation of the company of the third party.

### 3.2 Workdays, Working Hours And Location

- 3.2.1 The order specifications will specify during which period and during how many Workdays and/or hours per week the Staff member will execute the activities on behalf of Customer or clients of Customer.
- 3.2.2 The agreed upon activities will generally be performed during Workdays.
- 3.2.3 Parties may agree that activities will be performed outside of Workdays. In this event Customer will have to pay the overtime compensation as set out in article 2.5.2 to *WtR Software B.V.*
- 3.2.4 The days on which the Staff member can take vacation and/or other leave are determined by *WtR Software B.V.* after consultation with Customer.
- 3.2.5 Unless agreed upon otherwise in the order specification, there will

- be no training and trial periods. In the event Customer has agreed to a training and trial period with its client and the training and trial periods may be charged to the client, *WtR Software B.V.* will have the right to charge such period to Customer.
- 3.2.6** *WtR Software B.V.* will instruct Staff to perform the activities in accordance with the in-house guidelines and regulations as made known in writing by Customer or client.
- 3.2.7** The general location where the activities shall be carried out by the Staff member will be described in the order specification.
- 3.3 Replacement**
- 3.3.1** If the Staff member is unable to carry out the activities as agreed upon due to illness or other reasons for a period of more than 10 Workdays, *WtR Software B.V.* will, upon the first request of Customer and as soon as possible, provide an adequate replacement to Customer.
- 3.3.2** If the Staff member (or his/her replacement), in the opinion of Customer, does not or no longer complies with the requirements indicated in the order specification or no longer performs the activities assigned to him/her adequately, Customer should submit a motivated request for replacement. If *WtR Software B.V.* agrees with the request of Customer, *WtR Software B.V.* will provide an adequate replacement to Customer as soon as possible.
- 3.3.3** If a trial period is agreed upon in the order specification and during the trial period it appears that the Staff member in question does not perform to satisfaction or in accordance with the reasonable requirements set for such Staff member, *WtR Software B.V.* will, after a written and motivated request of Customer, provide an adequate replacement to Customer as soon as possible.
- 3.3.4** In the case of article 3.3.1, 3.3.2 and 3.3.3 parties will at all times and in all reasonableness try to reach a solution, especially where it concerns an additional training and adjustment period and the qualifications of the replacement of the originally appointed Staff member.
- 3.4 Compensation**
- 3.4.1** Customer will pay *WtR Software B.V.* a fee for the work performed by Staff on behalf of Customer or its clients. No fee is due by Customer for vacation and other leave taken by the Staff member, unless otherwise agreed.
- 3.4.2** *WtR Software B.V.* will see to it that the Staff member will submit an hours report in which the hours worked by Staff member are specified on a weekly basis to Customer. The hours report will be signed by Customer for agreement.
- 3.4.3** The agreed upon fee will be indicated in the order specification. The fee due is dependent upon the level of education, skill and experience of the Staff member.
- 3.4.4** For every continuous period within which *WtR Software B.V.* performs activities for less than 3 (three) hours, *WtR Software B.V.* will be entitled to charge Customer for a minimum of 3 (three) hours. A continuous period exists if the period in which no activities are performed, in between the one period and the next period in which activities are performed, does not exceed more than 1 (one) hour.
- 3.4.5** Customer is not required to pay *WtR Software B.V.* for hours not worked by Staff due to illness, unless otherwise agreed. *WtR Software B.V.* will ensure that Staff unable to perform activities due to illness call in sick before 9:30 am local time with Customer and *WtR Software B.V.*
- 3.4.6** The fees agreed upon in the order specification may not be changed, unless agreed upon otherwise in the order specification. Changes in fee will be made known one month prior to commencement of the change in the fee. Changes in fees will be reasonable and amongst others based on costs of salaries, social premiums, materials, and travel and accommodation costs.
- 3.4.7** Local travel costs between home and work will not be charged to Customer. Travel costs that fall outside the normal local travel between home and work will be based on a kilometer price as set out in the order specification or otherwise agreed.
- 3.4.8** All other costs made by *WtR Software B.V.* and/or Staff with regard to the performance of activities will be reimbursed to *WtR Software B.V.* by Customer.
- 3.5 Declaration Accountant**
- 3.5.1** *WtR Software B.V.* shall withhold the taxes and social premiums due with regard to the salaries of the Staff member(s) and pay them to the relevant institutions.
- 3.5.2** Only upon the written request and at the cost of Customer will *WtR Software B.V.* submit a declaration of a (registered) accountant or other proof indicating that *WtR Software B.V.* or a third party hired by *WtR Software B.V.* has paid the indebted taxes and social premiums with regard to the Staff member.
- 3.5.3** If *WtR Software B.V.* is not required to withhold social premiums, *WtR Software B.V.* will only submit a declaration of the relevant institution upon the written request and at the cost of Customer.
- 3.5.4** *WtR Software B.V.* will indemnify Customer from possible claims from the tax authorities with regard to social security premiums and/or taxes due and possible fines with regard to non payment of such to the extent that they relate to the work agreed upon in the order specification.
- 3.6 Intellectual Property**
- 3.6.1** In deviation to what is stated in article 8, all intellectual property rights, industrial property rights, and/or other rights, that result from the work carried out by the Staff member as agreed upon in the order specification will remain and/or will become the property of Customer or its clients.
- 3.6.2** If knowledge or materials, including software programs and work instructions, made available by *WtR Software B.V.* during the carrying out of activities are protected by intellectual property rights, industrial property rights, or other rights, *WtR Software B.V.* grants Customer or its clients a non-exclusive, non-transferable right to use such knowledge or materials within the scope of the project. Customer will not make this knowledge and/or materials available to third parties other than its clients. The clients of Customer do not have the right to make knowledge and/or materials available to third parties in any manner.
- 3.6.3** Customer indemnifies *WtR Software B.V.* from all claims of clients of Customer and/or third parties with regard to a breach of intellectual property rights, industrial property rights, or other right as a result of carrying out activities on behalf of Customer.
- 3.6.4** *WtR Software B.V.* indemnifies Customer from all claims of clients of Customer and/or third parties with regard to a breach of intellectual property rights, industrial property rights, or other right based on the knowledge and/or materials provided to Customer on the basis of article 3.6.2 as a result of carrying out activities on behalf of Customer.
- 4. COURSES**
- 4.1 Application**
- 4.1.1** Applications for participation in Courses must take place at least 2 (two) weeks prior to commencement of the Course. If the requested Course is fully booked, Customer shall be notified.
- 4.1.2** Immediately after receipt of an application *WtR Software B.V.* will send a confirmation of receipt regarding the Course subscribed to. For applications which have been made verbally, the confirmation will be considered to reflect the application correctly and completely, unless objections are made in writing within 3 (three) Workdays.
- 4.1.3** Courses are given against the current applicable rate. *WtR Software B.V.* has the right to charge costs made such as rent for office space, Course materials, etc.
- 4.2 Cancellations**
- 4.2.1** *WtR Software B.V.* reserves the right to cancel a Course if the required number of applications is not met. If such cancellation takes place Customer will initially be notified at least 1 (one) week prior to commencement of the Course. Any Course fees paid will be reimbursed. In the event the required number of applicants is not met, Customer may decide to participate in the Course against a higher fee. This will be done in consultation.
- 4.2.2** Cancellations made by Customer 4 (four) weeks prior to commencement of the Course are free of charge, after that 50% of the indebted Course fee will be charged. For cancellations made within 1 (one) week or after commencement of the Course, *WtR Software B.V.* will be entitled to charge 100% of the indebted amount.
- 4.3 Execution**
- 4.3.1** *WtR Software B.V.* will strive with best efforts to provide the Course in accordance with the published schedule, but will not be liable if the Course must be canceled due to special circumstances. In such an event *WtR Software B.V.* will strive within reason to provide the Course or the remainder of the Course at a later time period. If this is not possible, Course fees paid will be reimbursed proportionally.
- 4.4 Private Courses**
- 4.4.1** Private Courses are Courses exclusively provided for Customer in which only Customer participates. Private Courses can be provided at either the location of Customer or *WtR Software B.V.*
- 4.4.2** Fees for Private Courses depend on the number of participants. If the number of participants is more or less than the number of participants assumed in the offer, *WtR Software B.V.* will have the right to increase or reduce the applicable fee.
- 4.4.3** In the event Courses are provided at Customer's location, Customer must provide the necessary facilities and offices space

in accordance with article 1.6.6.

#### 4.5 Refusal Participants

- 4.5.1 *WtR Software B.V.* reserves the right to refuse participants to a Course:
- if payments due have not yet been fully paid and/or on time before commencement of the Course;
  - due to competitive reasons or other reasonable grounds for *WtR Software B.V.*

### 5. THIRD-PARTY PRODUCTS

#### 5.1 Third Party Products

- 5.1.1 *WtR Software B.V.* has the right to deliver Third Party Products or make use of Third Party Products in fulfilling its obligations that may arise from the agreement. *WtR Software B.V.* is not responsible for Third Party Products, unless agreed upon otherwise in writing.
- 5.1.2 If *WtR Software B.V.* delivers Third Party Products to Customer the Third Party General Conditions will be applicable to the agreement in addition to these General Conditions *WtR Software B.V.*
- 5.1.3 *WtR Software B.V.* 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 *WtR Software B.V.* 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 *WtR Software B.V.* shall, when available to *WtR Software B.V.*, only be provided on request. Third Party General Conditions will be delivered in the same format and language as received by *WtR Software B.V.*
- 5.2.2 The General Conditions *WtR Software B.V.* have priority over Third Party General Conditions unless indicated otherwise. When there is conflict between the General Conditions *WtR Software B.V.* and Third Party General Conditions, *WtR Software B.V.* has the right to declare the conflicting terms of the Third Party General Conditions non-applicable.

### 6. DELIVERY

#### 6.1 (Delivery) Dates

- 6.1.1 All (delivery) dates which may be named by and may be applicable to *WtR Software B.V.* are determined to the best of *WtR Software B.V.*' knowledge on the basis of information made known to *WtR Software B.V.* and will be taken into consideration as much as possible.
- 6.1.2 (Delivery) dates shall therefore not be considered to be absolute (delivery) dates within which must be delivered, but a time period within which *WtR Software B.V.* shall strive with best efforts to deliver the agreed upon items. If it is not possible to keep to the (delivery) date, then *WtR Software B.V.* and Customer will consult with each other to agree on a substitute (delivery) date.
- 6.1.3 Exceeding a given (delivery) date which may be applicable never constitutes an attributable shortcoming by *WtR Software B.V.* *WtR Software B.V.* does not accept liability under any circumstances in cases where the (delivery) date may be exceeded.

#### 6.2 Reservations

- 6.2.1 *WtR Software B.V.* shall commence execution of the agreement between *WtR Software B.V.* and Customer only after a signed copy of the agreement drafted by *WtR Software B.V.* has been received by *WtR Software B.V.* and/or having received payment of all amounts due fully and on time. Should *WtR Software B.V.* 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 on time, *WtR Software B.V.* 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 on time.
- 6.2.2 Customer's rights, such as but not limited to the transfer of Products, are provided under the suspended condition that Customer pays the agreed compensations fully and on time. In case of failure to pay, Customer must return the Products to *WtR Software B.V.* at Customer's expense within one week of receiving the instruction from *WtR Software B.V.* to do so. All other remedies in law remain applicable.
- 6.2.3 If Customer fabricates a new product, on the basis of the Products delivered by *WtR Software B.V.*, this will be done on behalf of *WtR*

*Software B.V.* and Customer will keep the new product for *WtR Software B.V.* until all amounts due on the basis of the agreement have been paid fully and on time. *WtR Software B.V.* will maintain all the rights as owner of the new product unless otherwise agreed.

#### 6.3 Risk

- 6.3.1 From the moment of delivery Customer will bear the risk of the Products delivered even if possible ownership and user rights have not yet been transferred. As a result 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 *WtR Software B.V.* cannot be held accountable.
- 6.3.2 The aforementioned will also be applicable from the moment in which Customer does not make it possible for *WtR Software B.V.* to make a delivery.

#### 6.4 Delivery and Acceptance Procedure

- 6.4.1 *WtR Software B.V.* shall deliver the Products to Customer in accordance with the specifications established in writing by *WtR Software B.V.*
- 6.4.2 Delivery of the Products (not being services) takes place when they are made available to Customer at *WtR Software B.V.* warehouse and the delivery of Products (services) by or through *WtR Software B.V.* takes place at the place and time that the services are performed. The costs for transport and possible insurance are for the account of Customer. The manner in which transport takes place is determined by *WtR Software B.V.* and insurance of the Products by *WtR Software B.V.* will not take place unless agreed upon otherwise in writing.
- 6.4.3 After delivery an acceptance period will be applicable. The acceptance period for Customer consists of 2 (two) Workdays. During the acceptance period, Customer is not permitted to use the Products for production and/or operational purposes.
- 6.4.4 The Products shall be considered by both parties as accepted:
- when *WtR Software B.V.*, before the end of the acceptance period, receives a correction report (debriefing) (article 6.5): at the moment that the corrections (article 6.6) identified in that correction report have been repaired, notwithstanding the presence of small corrections which according to article 6.6.4 do not hinder acceptance;
  - if Customer accepts and/or approves of the delivered Product in another manner.
- 6.4.5 If the Products are delivered in phases and/or parts, the non-acceptance of a particular phase and/or part will not delay the acceptance of an earlier phase and/or another part.
- 6.4.6 In deviation to the previous, the Products shall be considered as accepted when Customer uses the Products in any manner before the moment of acceptance for productive or operational purposes, from the beginning of such use.

#### 6.5 Correction Report

- 6.5.1 If it becomes apparent during the acceptance period that the Products need corrections, as described in article 6.6, Customer shall inform *WtR Software B.V.* no later than the last day of the acceptance period in a written and as detailed as possible correction report of the corrections; in which case the still remaining acceptance period will be interrupted until such time as the Product is so modified that the corrections are made.

#### 6.6 Correction

- 6.6.1 Correction means the failure to fulfill the (functional) specifications as agreed upon in writing. A correction only exists where such can be demonstrated. Customer is required to immediately report possible corrections to *WtR Software B.V.*
- 6.6.2 Every right to have corrections made lapses if the Products provided by *WtR Software B.V.* are altered in any way or form.
- 6.6.3 Corrections shall take place at the location to be determined by *WtR Software B.V.* *WtR Software B.V.* is entitled to install temporary solutions, emergency solutions, detours, and/or other problem-avoiding restrictions in the Products.
- 6.6.4 Acceptance of the Products 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 corrections which do not reasonably impede putting the Products into productive or operational use.

#### 6.7 Replacement Performance

- 6.7.1 *WtR Software B.V.* is permitted to deliver alternative Products than those Products ordered by Customer if the performance and operation of such alternative Products is essentially no different from the Products ordered.
- 6.7.2 If the agreement is entered into with the objective of having activities carried out by a particular individual, *WtR Software B.V.*

will be entitled to replace this person with another person with the same qualifications.

## 7. PRICES/PAYMENTS

### 7.1 Prices and Payments

7.1.1 All prices exclude VAT and other levies imposed by the government. The amounts invoiced to Customer will include applicable VAT and other levies possibly imposed by the government.

7.1.2 *WtR Software B.V.* will invoice the amount, appropriately itemized, owed by Customer on a monthly basis to Customer. Customer will pay all amounts indebted within 30 (thirty) days of the invoice date. These payments will not be subject to compensation or deduction other than when permitted by law.

7.1.3 Should Customer fail to fulfill any obligation, Customer is in breach without any further notification of breach being required. *WtR Software B.V.* reserves the right to charge all incurred costs to Customer, including judicial and extra-judicial expenses, with regard to the collection of debts from Customer. Extra-judicial collection costs amount to 15% of the debt, with a minimum of Euro 500.00 (five hundred). In any case 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.

7.1.4 Until full payment has been made, *WtR Software B.V.* has the right to suspend all services and obligations to Customer. The Customer's obligation to meet Customer's commitments remains unchanged.

7.1.5 If *WtR Software B.V.* is unable to make a delivery in time due to Customer, *WtR Software B.V.* will have the right to charge a 1,5% interest reimbursement on a monthly basis over the indebted amount.

7.1.6 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 Customer, appropriately itemized, prior to each year or other period that the agreement between parties continues.

7.1.7 The indebted amount in article 7.1.1 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 *WtR Software B.V.*' office. In the event that activities need to take place outside of *WtR Software B.V.*' 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 *WtR Software B.V.* The foregoing is also applicable on services provided outside of The Netherlands.

7.1.8 Above mentioned paragraphs leave all the legal rights of *WtR Software B.V.* unhindered when Customer fails to meet Customer's commitments.

### 7.2 Price Changes

7.2.1 The prices agreed to between *WtR Software B.V.* and 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. *WtR Software B.V.* 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.

7.2.2 *WtR Software B.V.* will offer Customer the possibility to become acquainted with possible changes in prices. If Customer does not agree with a price change, 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 annual 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%.

### 7.3 Fixed Price

7.3.1 In the case of a Fixed Price agreement, activities will be performed on the basis of a prior agreed upon price.

7.3.2 Unless *WtR Software B.V.* can appeal to article 1.6.4, extra hours will not be charged.

### 7.4 Subsequent Calculation

7.4.1 When charges are to be based on Subsequent Calculation, this means that prior to *WtR Software B.V.* commencing the activities agreed to 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.

### 7.5 Advance

7.5.1 *WtR Software B.V.* has the right to charge payments in Advance. If full payment of the Advance is not made, *WtR Software B.V.* has the right, undiminished its other rights that may arise from the agreement, to suspend all its obligations and all amounts owed by Customer will be immediately due.

### 7.6 Payment Schedule

7.6.1 Unless agreed upon otherwise, the following payment schedule will apply to Customer:

- a) First term, 30% of the amount due will be paid as an Advance;
- b) Second term, 40% of the amount due will be paid in equal parts on a monthly basis between the moment of entering into the agreement and the expected delivery date of the Product;
- c) Third term, 30% or the remainder of the amount due will be paid immediately after delivery.

## 8. INTELLECTUAL PROPERTY RIGHTS

### 8.1 Rights of Customer and *WtR Software B.V.*

8.1.1 Except where Third Party Products are concerned, all intellectual property rights, industrial property rights, and other rights resulting from all activities carried out by *WtR Software B.V.*, regardless of where and when carried out and regardless of whether it concerns the delivery of an existing Product or a still-to-be-developed Product, reside with *WtR Software B.V.*

8.1.2 Customer acknowledges that all present and future intellectual property rights, industrial property rights, other rights, 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 *WtR Software B.V.*

8.1.3 The intellectual property rights, industrial property rights, or other rights of a Product, or a part thereof, can only be transferred to Customer by means of a written deed; if *WtR Software B.V.* has these rights.

8.1.4 In the event that *WtR Software B.V.*, 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 *WtR Software B.V.* or the rightful third party. If the above mentioned rights do not belong to *WtR Software B.V.* or the rightful third party, Customer will cooperate in transferring the above mentioned rights to *WtR Software B.V.* or the rightful third party.

### 8.2 Indemnification

8.2.1 Parties shall indemnify each other from any allegation to the effect that the object, which has been delivered by one party to the other party or has been made available, violates an intellectual property right or industrial property right valid in The Netherlands. The indemnifying party shall pay the damages and expenses that are determined and assigned by the final court ruling, provided that:

- a) the party being indemnified notifies the indemnifying party immediately, but no later than within 10 (ten) days, after the party being indemnified 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 the indemnifying party, including all negotiations and arrangements that might lead to a settlement.

In case of any such allegation or possible allegation, *WtR Software B.V.* reserves the right to obtain a license or sub-license on the *WtR Software B.V.* Product in question or to change or replace the *WtR Software B.V.* Product in such a way that the *WtR Software B.V.* Product will no longer infringe a copyright valid in The Netherlands. If, at *WtR Software B.V.*' sole judgment, the foregoing remedies are not a reasonable option, *WtR Software B.V.* has the right to take the delivered *WtR Software B.V.* Product back against reimbursement of payments made for the *WtR Software B.V.* Product in question, minus a reasonable compensation for having made use of the *WtR Software B.V.* Product.

8.2.2 *WtR Software B.V.* shall not indemnify Customer against an action in the event that:



- a) such is based on the fact that the Third Party Products provided to Customer violate an intellectual property right, industrial property right or other right valid in the Netherlands or elsewhere;
  - b) what is provided by 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) Customer has made a change in or to the Product.
- 8.2.3** If *WtR Software B.V.* and Customer agree that the intellectual property rights, industrial property rights, or any other rights of a *WtR Software B.V.* Product, or a part thereof, shall be transferred to Customer, Customer will indemnify *WtR Software B.V.* against any action insofar as such is based on the fact that the Product, or a part thereof, violates an intellectual property right, industrial property right, or any other right belonging to a third party.