

**GENERAL CONDITIONS**  
of **ACA Groep B.V.**  
established in Eindhoven

**GENERAL CLAUSES**

**Art. 1. Terms**

**ACA:** the company of the ACA Groep B.V. with whom the Principal concludes or wishes to conclude an agreement. The following are certainly included as companies of the ACA Groep B.V. as intended here, yet this is in no way exhaustive: ACA Retail B.V., ACA International B.V., ACA Facilitair B.V., ACA Retail for Personal Care B.V.

**Principal:** any legal or natural person, who has concluded or wishes to conclude an agreement with ACA and in addition to these, their representative(s), agent(s), legal successor(s).

**Products:** goods that are delivered to the Principal by or through the intervention of ACA.

**Services:** services provided by ACA or third parties by order of ACA for the benefit of the Principal.

**Equipment (or hardware):** the computer equipment delivered to the Principal by or through the intervention of ACA or peripherals including the corresponding system software.

**Software:** software excluding documentation and materials.

**Documentation:** all manuals, descriptions, course materials, models, methods and other items supplied by or through the intervention of ACA with the products and services delivered by or through the intervention of ACA.

**Software:** the computer software supplied by ACA including the corresponding documentation and materials, if applicable including recent releases and software updates.

**Application:** new application programs developed and/or generating using the software.

**Customisation:** customised software and/or customised adaptations to software developed by ACA.

**Implementation:** the introduction of software into the equipment and where necessary the adaptation of the software so that the software operates in accordance with the agreed functional specification.

**Installation:** setting-up, installing and connection the equipment in such a way that it operates in connection with the installed software.

**(Computerisation and or Automation-) advice:** services listed in this agreement are aimed at the automation and computerisation with the Principal.

**Art. 2. Scope of application**

1. The general conditions are applicable to all offers of, agreements with, deliveries of and work carried out by ACA. Deviating clauses, agreements or arrangements are only applicable if and insofar as these have been confirmed by ACA in writing.
2. By entering into an agreement with ACA the Principal explicitly relinquish any conditions enforced by it, whatsoever

these are called so that these conditions from ACA are exclusively applicable to all agreements.

**Art. 3. General**

1. Changes to an agreement, whereby detrimental consequences may arise for ACA and cancellation of an agreement, are not possible except by written agreement from ACA, except in the event that such may be claimed in accordance with the law or insofar as this is stipulated in the conditions.
2. Clauses, on the basis of which ACA makes undertakings without the Principal undertaking to purchase services/goods, or on the basis of which the quantity and/or price of the deliveries or respectively purchased services/goods are subject to a reserve are non-committal.

**Art. 4. Tenders and quotes**

1. All tenders and quotes made by ACA in which the contrary is not explicitly stated are entirely non-committal. In the event that no period of validity is indicated, the tenders are valid for 30 days. All details provided by ACA in the form of print, brochures and the like are subject to change without prior notification and are not valid as a quote.
2. Tenders submitted are based on the details provided at the request (for tender). The Principal is responsible for providing all relevant and essential information. In the event that the Principal becomes aware of new relevant and/or essential information after commencement of the agreement he will immediately inform ACA thereof.
3. ACA has the right to refuse an order without giving any justification.

**Art. 5. Execution of activities / place of delivery**

1. The place of execution of the agreement or the place of delivery shall be agreed in writing between the parties. If no place is agreed as intended here ACA will choose the most appropriate location taking the circumstances into account.
2. The Principal shall provide ACA with access to the place of execution or delivery in good time.
3. The Principal is responsible for all requirements that may reasonably be made in the framework of the order with regard to the place of execution of delivery are fulfilled.
4. ACA is entitled to inspect the place of execution or delivery and to give the Principal reasonable advice in relation to the intended place. ACA is entitled to suspect execution or delivery if the place of execution or delivery does not comply with the demands that may reasonably be placed on it, so that a proper execution of the agreement cannot be guaranteed by ACA.
5. The delivery periods given or agreement are valid as an estimate, unless explicitly

agreed otherwise in writing. Exceeding the delivery period cannot in any event, even after formal notification, give rise to a claim for compensation.

6. If the Principal agrees a date with ACA on which the execution of the works shall be carried out, ACA is entitled to agree more detailed conditions in relation to the cancellation of the intended date by the Principal. If applicable ACA will make these conditions known to the Principal in writing at the time of the agreement of the date concerned.

**Art. 6 Prices, tariffs and payment**

1. ACA's prices are based on (cost) price defining factors, valid on the date the agreement is concluded. If any increase of those (cost) price defining factors occurs before or, if delivered in batches, during the delivery, ACA has the right to charge the Principal a proportional increase.
2. The prices given by ACA are always exclusive of VAT, import duties, other taxes, excise, levies and dues, unless explicitly stated to the contrary. ACA is entitled to charge changes to these tariffs to the Principal.
3. The prices of products or services to be delivered by ACA are always notified in writing. Any adjustment or change to works or deliveries agreed previously might, depending on the nature and extent thereof, be indicated by ACA as additional work in which case the agreed price shall be adjusted in accordance with it.
4. Unless agreed to the contrary payments must be made in full on the delivery date of the products or in the event of works being carried out by ACA, either for agreed remunerations for support contracts, within 14 days of the date of the invoice. ACA is entitled to request partial or complete payment in advance, on grounds justified by it. Support contracts are invoiced to the principal in advance of the period to which the contract relates. In the event of payment by giro or bank the valid payment date is the date of the credit onto ACA's giro or bank account.
5. ACA is not obliged to inform the Principal in advance of the expiry of a payment deadline or to send him statements of account and the like, unless explicitly agreed to the contrary.
6. All amounts and expenses owed by the Principal are given in euros and are increased by VAT and any other state levies. All amounts owed by the Principal shall be paid by him, without suspension or calculation by transfer onto the account given by ACA. After the due date, being the date on which the payment should have been made at the latest in accordance with section 4 of this article the Principal shall owe the contractual interest, of 1% per month, owed without any formal notification being required.

The Principal never has the right to suspend payment. After expiry of the payment deadline the Principal is in default of payment without any formal notification being required.

7. In the event that an order is placed by more than one Principal, all Principals are liable in full for the compliance of the obligations as indicated above (regardless of the name on the invoice or agreement).
8. From the 15<sup>th</sup> day following that on which the payment deadline expired, the Principal owes ACA a penalty for defaulting payment of 1.0% of the amount owed for each further period of 14 days exceeding the payment deadline. The aforementioned is valid without prejudice to ACA's right to suspend further execution of the agreement in the event of payment arrears of the Principal or to terminate this agreement by means of a written notification.
9. In the event of failure to pay or late payment all court proceedings and execution costs and the extra-judicial collection costs are payable by the Principal. The extra-judicial collection costs are fifteen percent of the claim ACA has on the Principal with a minimum of 200 euros.
10. ACA always has the right to request surety from the Principal both before and after the conclusion of the agreement, this under suspension of the execution of the agreement by ACA until surety has been provided; this without prejudice to ACA's right of fulfilment, compensation and/or complete or partial cancellation of the agreement, all this without any legal intervention and without ACA being liable to any compensation whatsoever as a result.

## **SOFTWARE DELIVERY AND DEVELOPMENT**

### **Art. 7. Delivery and Acceptance**

1. The delivery of programs/software is considered to have been completed at the moment that the programs/software are made available to the Principal. The software is considered to have been accepted after delivery if no acceptance test is carried out or if this has been carried out and was successful.
2. Immediately after ACA has made the programs/software available to the Principal, the Principal shall, if required, carry out an acceptance test by consultation with ACA. In the event that it is agreed that ACA shall install and/or implement the software delivered the Principal shall immediately carry out an acceptance test by consultation with ACA after the installation or implementation.
3. Acceptance of the programs/software delivered may not be withheld on any grounds other than those relating to the specifications explicitly agreed between

the parties and furthermore not on account of the existence of small deficiencies, being errors that do not reasonably hinder the operational or productive use of the software, without prejudice to that stipulated in article 12 (guarantee)

4. Any faults in the programs/software delivered shall be notified to ACA in writing by the Principal within 8 days of delivery, in the event that ACA was responsible for the installation and/or implementation, within 8 days after the installation or implementation. A fault in the programs/software only arises if this may be reproduced by ACA and it can objectively be shown that the intended programs/software do not comply with the functional specifications agreed in writing.
5. In the event that the no fault is reported by the Principal within the period stated in the previous section then the programs/software are then considered as accepted by the Principal, without prejudice to that stipulated in article 12 (guarantee).
6. ACA shall give an estimate of the deliver date of the programs/software for software development activities on the basis of the data available to it on acceptance of the order. In the event that the estimated delivery date is exceeded on the basis of this data and/or on the basis of any cause whatsoever, ACA shall inform the Principal thereof as quickly as possible. ACA shall do everything within reason to comply with the given delivery deadlines or estimated for delivery dates yet is not in anyway obliged to do so. Exceeding these dates does not give the Principal any right to complete or partial termination of the agreement or to compensation, unless there is a case of serious misconduct on the part of ACA.

### **Art. 8. Software delivery and installation**

Unless agreed otherwise ACA will ensure delivery of the programs/software stated in the agreement and the Principal is responsible for the installation on the equipment intended for it or stated in the agreement and for the implementation of the software.

### **Art. 9. Intellectual property and granting rights of use**

1. The ownership and all rights to industrial and intellectual property for software or customisation developed or delivered by ACA remain, insofar as is not apparent to the contrary, with ACA or the supplier who gave ACA the right to provide this software to third parties. The Principal shall never acquire the intellectual property rights to software or customisations developed and/or delivered by ACA, including analyses, designs, computerisation advice, and

other goods supplied by ACA and made available to the Principal.

2. ACA guarantees that the software developed by it does not breach any rights of third parties in the Netherlands and that the use thereof is consequently not unlawful with regard to third parties. It indemnifies the Principal with regard to software developed by it of any claims made by third parties in relation to (alleged) breaches of their rights.
3. ACA grants the Principal the right to use the software or customisations developed by ACA with the corresponding documentation. The right of use is exclusively valid for the object codes of the software or customisations concerned. The right of use is not exclusive, non-transferrable and cannot be sublicensed.
4. The Principal shall pay for a licence for the right to use the software or customisations concerned. The right to use the software or customisations concerned begins at the implementation of the software on the equipment concerned, under the understanding that the right of use cannot in any event commence at a date prior to the date ACA receives the amounts owed by the Principal.
5. The right of use of Software or Customisations developed and delivered by ACA is valid for an unlimited duration, unless ACA has agreed a periodical license fee with the Principal. In this case the right of use is exclusively granted for those periods, for which the Principal has paid the license fee.
6. The right of use for updates and releases made available for the software developed and already made available by ACA (excluding customisations), are exclusively granted on the basis of a separate agreement concluded for this between the Principal and ACA, in accordance with the conditions stipulated in that agreement.
7. Unless explicitly agreed to the contrary, the following is applicable for the use of the software or customisations made available to the Principal:
  - a) The Principal shall exclusively use the software or customisations concerned for their own benefit in the framework of their normal business activities and shall not provide, lease, lend or provide consultation of the software or copies thereof to third parties in any way whatsoever or to send the software via a network using information technology, or to provide third parties with the any opportunity whatsoever to breach the conditions (of use) stipulated in the agreement;
  - b) The Principal shall exclusively use the software concerned in accordance with the purpose and

- instructions stipulated in the documentation and the agreement;
- c) The Principal shall not make copies of the software in any way whatsoever, this with the exception of copies for back-up purposes insofar as this is required;
  - d) The Principal shall not in any way change, remove or render illegible the copyright, trademark or rights of ownership;
  - e) In the event that it is stated in the agreement that the software is intended to operate on specific equipment or in a specific place then the right of use is restricted to that equipment and/or place. During a fault in the equipment concerned the Principal is entitled to use the software on different equipment, on condition that ACA is immediately notified thereof and only for the duration of the fault;
  - f) Unless stipulated to the contrary in the agreement, the Principal is not entitled to have the software used by more than one user simultaneously
  - g) The Principal is not entitled to decompile, disassemble or reverse engineer the software developed by ACA either in whole or part, insofar as such is not explicitly authorised in accordance with the European Guidelines for the Protection of Software (91/250/EEG);
  - h) The Principal is not entitled to write, develop (or have such developed) derived software or others to the software developed and/or made available by ACA, except insofar as such was authorised in advance in writing by ACA;
  - i) The Principal shall not in any way make changes, adjustments or additions to the software (or have such made);
  - j) In the event that other applications may be generated using the software, the Principal acknowledges that these applications are incorporated in the software delivered by ACA or a part of the software delivered by ACA. The copyright with regard to these applications (excluding the incorporated software of ACA) is then solely with the Principal, yet the Principal is obliged to comply strictly with the clauses in these conditions with regard to these applications, unless explicitly agreed otherwise in writing;
  - k) The Principal is not entitled to make the software accessible to people involved in the development and/or sale of other goods management systems;
8. In the event of a breach of that stipulated in section 7, the Principal forfeits a fine of 22 500 euros per breach immediately payable to ACA and a fine of 10% (ten percent) of the said fine for every day the breach lasted and/or lasts without prejudice to any other rights of ACA whatsoever; this without prejudice to the obligation of the user to pay the complete compensation for the breach in the event that the damage may exceed the said fines. Any fines paid are then deducted from the compensation owed.
9. In order to protect its software ACA is free to take technical measures. In addition the Principal shall grant ACA access to the place(s) where the software is used so that ACA can verify correct compliance with that stipulated in this article.
  10. If and insofar as the software products are developed by ACA, ACA reserves the complete and exclusive right to all know-how, skills and competence which formed the basis for this development. ACA shall always be entitled to use the know-how, skills and competence as intended in the previous sentence for the benefit of other orders or projects without owing any compensation or remuneration whatsoever to the Principal.
- Art. 10. Development of customised and application software**
1. In the event that ACA produces customisation or applications for the Principal, ACA shall carry out these activities with care on the basis of information to be provided by the Principal. The Principal is responsible for the accuracy and completeness of this information.
  2. Unless indicated otherwise in the order confirmation or licence agreement the production of customisation or applications shall take place over numerous phases, namely:
    - a) written inventory drawn up by the parties of the functionalities and features of the customisation and/or applications to be realised and – if necessary – the production by ACA of the function design and/or development of the functionalities of the customisation to be realised;
    - b) production of the customisation and/or the application by or on behalf of ACA in conformity with the specifications set down in writing and/or the functional design;
    - c) if and insofar as this is agreed, the installation and implementation of the customisation or application by ACA.
  3. Each phase may, if required, be concluded by an approval by the Principal of the services or the customisation or applications produced up to that point. ACA is entitled to suspend the following phase(s) as long as the Principal has not approved the previous phase(s).
4. The inventory mentioned in section 2 under a and the functional design and/or elaboration of the functionalities to be realised for the customisation shall constitute a part of the agreement after approval by the Principal. In the event that the Principal wishes to change and/or extend the functionalities described therein or to change the specifications in any other way this is considered additional work and the parties shall define this change and/or extension in a new inventory or functional design, that shall constitute a part of the agreement from that moment on, while the original functional design shall be considered to have lapsed insofar as it is changed.
5. Regarding customisation that stipulated in article 9 (intellectual property rights and granting rights of use) are equally applicable. Unless explicitly agreed otherwise in writing, the source codes and/or development documentation shall not be made available to the Principal.
- Art. 11. Maintenance and support**
1. Clauses relating to the execution of maintenance and support are exclusively applicable in the event that the parties have agreed such in writing. The maintenance and/or support clauses are initially valid for a period of three years and are then always automatically extended annually unless one of the parties terminates the agreement at the latest 3 months before the end of the maintenance and/or support period in writing.
  2. Unless explicitly agreed otherwise the maintenance and/or support exclusively relates to the latest update or release of the programs/software developed and delivered by ACA. In the event of an agreement that ACA should carry out support activities in relation to customisation or applications that stipulated in this article is equally applicable.
  3. In the framework of the maintenance and/or support activities and if agreed ACA shall do the following to the best of its ability:
    - a) Inform the Principal concerning the availability of expansions and improvements developed by ACA of the programs/software in the form of updates and releases;
    - b) make new releases of the Software available to the Principal. The Principal shall (have ACA) install these new releases on receipt.
    - c) provide telephone support in the use of the programs/software at the request of the contact of the Principal as stated in the agreement;
    - d) attempt to trace and repair faults experienced by the Principal and recognised by ACA in the programs/software delivered in a following Update;

- e) inform the Principal of the issue of releases in order to make it possible for the Principal to increase the functionality of the programs/software by purchasing those releases.
- 4. Works other than those described in section 3 and in particular works as a result of the following falls outside the scope of the maintenance and support:
  - a) the incorrect functioning of the software as a result of the inadequacies of the equipment, or (system) applications on which or in connection with which the software concerned is used
  - b) the incorrect functioning of the software in the event that it is used in connection with software not delivered or recommended by ACA;
  - c) use of the software contrary to the corresponding documentation or instructions from ACA
  - d) the incorrect functioning of the software as a result of negligent use by the Principal.
- 5. If required ACA may (after agreement) carry out other maintenance work if the aforementioned works are carried out on the basis of post-calculation, at the tariffs in force at that time.
- 6. If the Principal does not conclude an agreement for maintenance and/or support at the same time as concluding the agreement for making the programs/software available, the Principal cannot oblige ACA to enter into such an agreement at a later date.

**Art. 12. Programs/software guarantee**

- 1. Unless agreed differently by the parties the following guarantee commitments of ACA are exclusively applicable.
- 2. A 90-day guarantee is applicable on programs/software delivered by ACA, starting on the date the programs/software is made available to the Principal. ACA's liability regarding this guarantee is limited to taking reasonably relevant measures that may remove or limit the fault and to trace and repair inadequacies to the best of its ability in relation to the functional specifications agreed in writing, on condition that these are reported by the Principal to ACA in writing within the said period. Inadequacies (faults) are only defined as serious deviations from the functional specifications that may be shown by the Principal. Repairing any lost data is never included under the terms of the guarantee.
- 3. The parties acknowledge that it is not possible to guarantee that (customised) programs/software shall work without interruption and/or minor faults or that all faults experienced shall (or can) be resolved.
- 4. No guarantees are given by ACA on programs/software delivered by or via ACA but to which the guarantee

- conditions and/or delivery conditions of third parties are applicable.
- 5. In the event that the Principal should make any changes themselves to the programs/software delivered by ACA without prior written agreement from ACA or has such changes made, any guarantee lapses. Furthermore ACA is then entitled to terminate the maintenance agreement without any obligation to the restitution of maintenance monies or any right to compensation.

**Art. 13 Software from suppliers**

- 1. If and insofar as ACA makes third party programs/software available to the Principal, the conditions of those third parties shall be applicable with regard to the software with the disregarding that stipulated in these conditions. The Principal accepts the conditions concerned of the third parties. These conditions are available for consultation by the Principal at ACA and ACA shall send these to the Principal on request on condition that they are or have not already been provided to the Principal on delivery of the programs/software. If and insofar as the conditions of the third parties concerned are not considered applicable for any reason whatsoever in the relationship between the Principal and ACA or are declared inapplicable, the stipulations in these general conditions are applicable.
- 2. Section 1 is valid without prejudice if the programs/software of third parties are delivered with or incorporated into the ACA software.

**Art. 14. Changes to the agreement – additional work**

- 1. The Parties may agree in the intervening time that the approach, method or scope of the assignment and/or the resulting work are extended or changed. From then on the Principal accepts that the agreed schedule for the agreement must be adjusted under those circumstances. If the intervening adjustment influences the fee agreed, the expenses or the level of the license fee, ACA shall notify the Principal thereof as quickly as possible.
- 2. In the event that ACA has to carry out works on the basis of a change to the agreement as a result of the extra requests or requirements of the Principal, which were not agreed initially, these works shall be charged to the Principal as additional work on the post-calculation basis using the tariffs then in force, unless explicitly agreed otherwise.

**Art. 15. Prices and tariffs with the delivery of programs/software**

- 1. In the event that it is agreed that ACA carries out maintenance and/or support as described in article 11, the Principal shall owe a remuneration, which shall be agreed in more detail.

- 2. In the event that it has been agreed with the Principal that this will acquire a release of the programs/software from ACA, ACA is entitled, if the intended release was not provided in the framework of maintenance agreement, to charge an additional licence fee for this.
- 3. For all other development activities to be carried out by ACA for the benefit of the Principal, including the development of customised and/or applications and the execution of installation and implementation activities the Principal owes a remuneration to be calculated on the basis of post-calculation in accordance with the tariffs in force at that time, unless explicitly agreed otherwise in writing.
- 4. Whether the administrative costs, travelling times, travel and accommodation expenses and other assignment-related expenses are included in the tariffs and the estimate of costs based on them is stated in the tender. Insofar as these expenses are not included or stated, these may be charged separately.

**EQUIPMENT AND OTHER GOODS**

**Art. 16. Equipment**

- 1. Goods delivered by ACA are considered to be accepted in the condition in which they are on delivery. The Principal is obliged to inspect the goods immediately on delivery for (visible) faults. The Principal must inform ACA if any faults are apparent.
- 2. ACA shall only install goods delivered by it if such is agreed (including equipment).
- 3. The Principal ensures that the necessary preparations have been taken in order for the personnel of ACA to be able to carry out the installation activities undisturbed and uninterrupted. Furthermore the Principal shall always ensure there is sufficient power and communications facilities and for the correct environmental conditions, including but not exclusively the wiring and the physical environment. Delays in the delivery by ACA as a result of missing preparations are invoices at the tariffs in force at that time.
- 4. The Principal is responsible for the functioning of the software and equipment or other peripherals purchased by it from third parties both on their own and in interaction with each other, unless it is agreed in writing that ACA shall ensure the mutual interaction of the software and equipment.

**Art. 17. Reservation of ownership and risk**

- 1. The ownership of products delivered by ACA is only transferred to the Principal once the latter has complied with all the obligations arising from the agreement. In the event of non-fulfilment of any of the obligations intended in the previous sentence and in the event of bankruptcy,

suspension of payment, liquidation or dissolution of (the company of) the Principal, ACA is entitled to take back the products delivered under reserve of ownership without any notification or formal reminder.

2. As long as the ownership has not been transferred to the Principal, the latter is not permitted to alienate, encumber, mortgage or place into the power of third parties in any way without written authorisation from ACA. ACA may attach more detailed conditions to such an authorisation.
3. As long as the reservation of ownership is applicable the ACA shall be entitled to unhindered access to its products. The Principal shall give ACA all possible cooperation in order to allow ACA to exercise the reservation of ownership defined in section 1 by taking back its products. Furthermore the Principal is obliged to cooperate with taking all reasonable measure that ACA wants to take in relation to the protection of its right of ownership concerning the Products and which do not unreasonably hinder the Principal from the normal execution of activities.
4. In the event that third parties want to place any rights on the products or have such enforced as long as there is still a reservation of ownership applicable, the Principal is obliged to inform ACA thereof.
5. The risk to the products delivered and/or made available by ACA is transferred to the Principal at the moment of delivery at the delivery address stated on the invoice from ACA.

#### **Art. 18 Return shipments**

1. ACA is not obliged to accept return shipments from the Principal without prior written authorisation from ACA.
2. Receipt of return shipments by ACA does not in any event imply any acknowledgement by ACA of the reasons given by the Principal for the return shipment. The risk relating to returned goods remains with the Principal until they have been credited by ACA.
3. ACA reserves the right to deduct 15% of the price of the products returned with a minimum of 25 euros from any credit arising from the return shipment.

#### **Art. 19. Guarantee on sale of equipment and materials**

1. Unless agreed otherwise by the parties the guarantee obligations of the supplier of the equipment disregarding the deviating clauses in these conditions are applicable. If and insofar as the conditions concerned from third parties are considered inapplicable or outside the scope of application for any reason in the relationship between the Principal and ACA, the stipulations of these conditions are applicable.

### **SERVICE PROVISION**

#### **Art. 20. Execution of services**

1. ACA shall make its best effort to carry out the service with care, if applicable in accordance with the agreements and procedures agreed with the Principal in writing.
2. In the event that it is agreed that the service shall take place in phases, ACA is entitled to postpone the commencement of the services belonging to a later phase until the Principal has approved the result of the previous phase in writing.
3. ACA is only obliged to follow-up instructions given in good time and with justification from the Principal during the execution of the service if this is explicitly agreed in writing. ACA is not obliged to follow-up instructions that change or supplement the content or scope of the agreed service; however if such instructions are followed-up, the activities concerned shall be remunerated in accordance with article 14.
4. Insofar as the service of ACA comprises the provision of a training or course, ACA is entitled, if the number of registrations gives cause for that in ACA's opinion, to combine the course or training with one or more courses or trainings or to have these take place at a later date or time.

### **GENERAL CLAUSES**

#### **Art. 21. Dissolution**

1. The Parties may dissolve the agreement in advance if either of them can show that the execution of the order can no longer take place in accordance with the agreement and any later additional order specifications. The party that appeals to the dissolution must notify the other party thereof in writing with justification. ACA may implement its right to advanced termination if the completion of the order cannot be reasonably expected of it as a result of factors beyond its control.
2. In particular ACA is entitled to the advanced and/or partial termination of the Agreement if the Principal fails to make it possible for ACA to carry out the deliveries or products and/or services for a period of 4 months in conformity to the Agreement. If ACA uses its right for dissolution in accordance with the reason described in this section, ACA is entitled to compensation for costs already incurred and compensation for a loss of income.
3. In the event that advanced termination is proceeded to by the Principal, ACA has a right to compensation for loss of income and costs already incurred.
4. In any event ACA reserves the right to advanced termination or in the event of dissolution a claim to payment of declaration for activities carried out up to

that time. In the event of dissolution of the agreement any amounts paid in advance or maintenance fees may not be refunded.

5. In the event that one of either party is declared bankrupt, requests a suspension of payment or ceases activities, the other party has the right to terminate the agreement with immediate effect.

#### **Art. 22. Confidentiality**

1. The parties are obliged to keep all information and data concerning the other party confidential in relation to third parties. The parties shall take all possible precautions to protect the interests of the other party.
2. The Principal shall keep all information concerning and/or related to the software and customisation and the operation thereof confidential without written authorisation from ACA and furthermore not give any information to third parties concerning the method at ACA.
3. ACA reserves the right to use the Principal's name for advertising and reference purposes.

#### **Art. 23. Liability and indemnification**

1. ACA is exclusively liable for the inadequacies attributable to it in the execution of the agreement, insofar as this is explicitly apparent from this article and these general conditions. ACA has taken out a professional liability insurance.
2. If and insofar as ACA is liable for damage suffered by the Principal, ACA exclusively accepts liability with regard to the Principal for direct damage to persons and goods, caused as a result of serious negligence or fault on the part of ACA or its personnel. Liability of indirect and/or consequential damage, including loss of turnover or profit is excluded in any event.
3. The liability for direct damage defined in section 2 is limited, pre claim to a maximum of the amount insured per claim in the liability insurance of ACA. Injury and company damage is exclusively eligible for compensation.
4. Any claims from the Principal as indicated above must be submitted within the period of the guarantee stated in article 12, in default of which the Principal relinquishes these rights.
5. Insofar as damage eligible for compensation should not be covered by ACA's liability insurance, the total liability of ACA for the damage is limited to the value of the work not yet carried out. The liability of ACA is furthermore limited to the amount of the fee (excluding VAT and expenses), which ACA received for its activities in the framework of the agreement, or in the event of a maintenance or support agreement the amount of the annual fee in accordance with the agreement. For orders that take

place over a period longer than half a year, a further limitation of the liability intended here is applicable to a maximum of the declaration amount (excluding VAT and costs) over the last six months.

6. ACA is never liable for damage related in any way whatsoever with viruses and/or any form of indirect or consequential damage with the Principal, e.g. damage relating to the loss of data, etc.
7. The Principal is responsible for the accuracy of the data and/or specifications provided by him in the framework of the order and is responsible for all consequences relating to any inaccuracy therein.
8. The Principal is liable for the safety of the personnel and property of ACA as long as this personnel and property is situated at the Principal's location. A condition for this is that any safety regulations in force with the Principal and safety regulations made known in advance to the personnel at ACA is complied with by this personnel.
9. The Principal indemnifies ACA against all claims from third parties on account of damage for which ACA is not liable pursuant to that stipulated in these general conditions.
10. The Principal process the packaging released with it from the Products delivered by ACA in accordance with the government regulations concerning these and shall indemnify ACA from all claims from third parties on account of non-compliance with such regulations.

**Article 24. Force Majeure (Non-attributable inadequacies)**

1. In the event of force majeure, both of a permanent and temporary nature, ACA is entitled to dissolve the agreement in whole or in part or temporarily to suspend it without the Principal and/or third parties enforcing any claim to the fulfilment thereof and /or compensation in lieu. The following are included under force majeure, yet not exhaustively: fire, natural disasters, molestation, risk of war, revolution, strikes, boycott, operational failure, disruptions to traffic, transport or communications facilities, unforeseeable stagnation of deliveries of goods and/or services by third parties, government measures and any other circumstances as a result of which the whole or partial fulfilment of the agreement cannot be reasonably and fairly expected of ACA.
2. In the event that the execution of the activities and provisions intended in this agreement are delayed by over two months as a result of force majeure, ACA and the Principal are authorised to terminate the agreement in writing. In that case ACA is entitled to compensation of the costs incurred by it up to that time.

**Art. 25. Miscellaneous**

1. In the event that the Principal does not or insufficiently complies with its (cooperation or payment) obligations or otherwise cooperation requested by ACA, ACA is entitled to suspend execution of the Agreement until the Principal does comply sufficiently with its obligations.
2. The Principal is itself responsible for the use and correct application and security in its organisation, of that delivered or made available by ACA. ACA is not in any way liable for the correct application of the goods delivered or services provided by ACA.
3. In the event of the invalidity of one or more clauses in an agreement between ACA and the Principal as well as in the general conditions of ACA, the other clauses of the agreement or conditions concerned shall remain in force fully. The Parties shall then consult with regard to the invalid clauses in order to find a substitute arrangement in the sense that the intention of the agreement or conditions is fully preserved.
4. Dutch law is exclusively applicable to agreements with ACA.