

# General Conditions of Design8 bv

Design8 bv will hereafter be referred to as D8

## 1. GENERAL PROVISIONS

### Applicability

- 1.1. These General Conditions are applicable to all offers by D8 and all agreements between D8 and another [contracting] party [the "Principal"] concerning the delivery of goods and/or services, the provision of advice and/or by which rights are transferred or licensed.
- 1.2. Upon handing over or official registration of these General Conditions they will replace any former General Conditions presented by D8, even if those former General Conditions were included in earlier agreements or correspondence. If any provision of these General Conditions should be altered during the term of an agreement to which they are applicable, the Principal will be deemed to have accepted such modification unless he gives notice in writing to the contrary within a fortnight after D8 has informed him of the alteration.
- 1.3. Principal's purchase or other General Conditions will not apply, unless and only to the extent that D8 has expressly accepted them.
- 1.4. If any clause of these General Conditions should be void or not valid under the law, all remaining clauses will nonetheless remain effective. Parties shall consult with each other in order to reach agreement on the substitution of the clause in question.

### General

- 1.5. Deviation by either party from the terms of these General Conditions is only effective if agreed upon in writing.
- 1.6. The rights and obligations ensuing from an agreement to which these General Conditions are applicable may not be assigned or transferred by the Principal to a third party without written consent from D8.
- 1.7. Parties are mutually obliged to keep any information, which they have received from the other party, and which is or must be considered confidential, secret; they will implement any reasonable measures to ensure secrecy such as imposing the obligation of secrecy on their employees.
- 1.8. Parties shall refrain from trying to employ the other party's personnel and shall abstain from any actions, which might be detrimental to the good name of the other party.
- 1.9. The Principal is responsible for the correct use and/or application of all matters, including data and information, which should be put at the disposal of the Principal within the scope of any agreement between D8 and the Principal. The Principal is also responsible for taking all security measures, which may be necessary to ensure that such matters remain complete and undamaged. The Principal cannot assert or derive any rights pertaining to these matters from the mere fact of their presence on his premises.
- 1.10. The Principal will provide D8 in time with all data and information necessary for the execution of an agreement, to which these General Conditions are applicable, as well as adequate working space and the required devices, materials and other facilities.
- 1.11. All agreements between D8 and the Principal are subject to the Law of the Netherlands.

### Offer, invoice and payment

- 1.12. All offers by D8 are made without engagement. Offers stand, unless otherwise indicated, for a period of 30 days.
- 1.13. D8 shall only be obliged to fulfil an assignment, commission or order or a modification thereof after it has been expressly accepted by D8 in writing.
- 1.14. Terms and time limits stated by D8 are indicative and have been established to its best ability in accordance with the known circumstances. D8 shall notify the Principal as soon as possible if stated time limits will be exceeded.
- 1.15. Prices offered will not be altered before delivery unless they were based upon D8's price-list [catalogue] and the prices stated therein should be lowered before the delivery date, in which case the Principal will have the right to pay the lower prices. Prices stated in a catalogue will not apply if D8 has made a separate offer to the Principal.
- 1.16. Unless expressly stated otherwise, prices are Ex-Works TIEL [Incoterms 2000] and do not include carriage, insurance, storage, import or export duties, installation costs nor travel or accommodation expenses or any other additional costs.
- 1.17. Prices stated in offers or agreements have been based upon conditions prevailing at the time of the conclusion of the agreement. In case of unforeseen [major] changes in the current system of taxation, the cost of materials, wages or the exchange-rates, before the date of delivery or during the performance of the assignment, D8 will have the right to adapt the prices agreed upon so that the adverse effects will be totally or partially compensated.
- 1.18. All prices and fees are stated in Euros and do not include taxes [V.A.T.] or other amounts levied by the official authorities, unless specifically stated otherwise.
- 1.19. D8's invoices will be paid by the Principal in accordance with the payment conditions stated on the invoice. If no such conditions are indicated, the Principal will pay the amount due within 14 days after the date of the invoice. Payment will be made without any deductions, compensation or prorogation.
- 1.20. If the Principal should fail to pay within the agreed period of time, he will automatically be in default and D8 will have the right to charge the legal interest over the entire amount as of the due date without prejudice to any rights to which D8 may further be entitled.
- 1.21. If the Principal fails to fulfil his obligations (in due time) or defaults on them, then all reasonable costs incurred to have all extrajudicial costs and debts paid shall be borne by the Principal. The Principal shall in any case owe the collection charges in the event of a monetary claim. The collection charges shall be calculated in accordance with the collection rates advised by the Nederlandse Orde van Advocaten (Netherlands Bar) for collection procedures.
- 1.22. If D8 demonstrates that he has incurred higher expenses, which were necessary in reason, said expenses shall also qualify for reimbursement.
- 1.23. The reasonable judicial and execution costs possibly incurred shall equally be borne by the Principal.

### **Force majeure, non-performance and termination**

1.24. D8 is not obliged to fulfil any obligation ensuing from an agreement to which these General Conditions are applicable, if -due to an alteration of the circumstances under which the agreement was concluded and which alteration cannot be attributed to D8 or is not for D8's risk-, D8 cannot within reason be expected to honour the engagement. If in reason it cannot be expected of D8 to fulfil its obligations due to force majeure or similar circumstances, performance under the agreement will be temporarily suspended for the duration of the force majeure, with a maximum of six months. After this period of time parties shall consult with each other about modification or termination of the agreement.

1.25. Force majeure also includes strikes, except those declared against D8's own policy, as well as non-performance of D8's suppliers.

1.26. D8 will only be liable for damages resulting from non-performance if and when the Principal, after having duly summoned D8 in writing to perform, terminates or dissolves the agreement. Dissolution or termination before the expiration date is not retroactive and will not affect deliveries made or obligations fulfilled prior to the termination date, unless the Principal can prove that such goods cannot be put to use because of D8's failure to fulfil the remaining obligations.

1.27. Untimely termination or dissolution will not discharge the Principal from the obligation of paying all sums then already due.

1.28. In the event that the Principal's provisional or final moratorium or bankruptcy is applied for or obtained, the Principal should lose control, whether in part or in whole, over his assets, the Principal's company should be liquidated or any other cases that it should be evident that the Principal will no longer be able to perform his obligations, D8 will have the right to dissolve all agreements between D8 and the Principal without further notice or court order and without prejudice to any rights or remedies to which D8 may further be entitled.

1.29. In the event that the Principal should fail to fulfil his obligations even after having been summoned to do so by D8, D8 may suspend performance of its engagements.

### **Liability**

1.30. Barring D8's liability for injury to human beings or damage to personal possessions caused by a product imported or manufactured by D8, D8's liability is limited to the instances and the extent expressly mentioned in these General Conditions. In all other cases D8's liability for damages or lost profits suffered by the Principal is excluded insofar as legally permitted and regardless of how an action may be brought against D8, with the exception of such cases in which the Principal should prove wilful intent or gross negligence on the part of D8. Liability is expressly excluded with regard to:

- Faulty or incomplete information given before an agreement was concluded between the parties;
- Damages caused by delays in delivery or excess of the indicated duration of an assignment;
- Damages caused [or partly caused] through shortcomings or negligence on the part of the Principal, including damages caused by the provision of insufficient or faulty information by the Principal to D8;
- Liability of the Principal towards third parties [e.g. claims or demands against the Principal by any third party];
- Commercial or other losses suffered by the Principal, including lost profits, unrealized economizations, loss of data or information, or any other form of indirect damages;
- D8's liability for death or injury of human beings and damage to personal possessions will nonetheless be excluded if the Principal uses any goods delivered by D8 for critical purposes without having informed D8 of this intention before the delivery.

1.31. Any liability of D8 towards the Principal not mentioned or excluded in these General Conditions is expressly limited to the equivalent of the amount paid by the Principal to D8 for the goods or services in question. The maximum liability in case of long-term contracts will never exceed the amount paid by the Principal to D8 for the services rendered during the last three months preceding the date on which the damage occurred. However, the sum total of D8's liability will never exceed the amount of five thousand Euros [€ 5.000,-]. This maximum liability is subject to deduction of any sums reimbursed to the Principal or any credit notes sent by D8.

1.32. D8 will not be obliged to pay any damages at all, if D8 is not notified in writing of the damages within six months, of their occurrence.

1.33. The Principal will indemnify D8 against claims or demands in connection with agreements between D8 and the Principal by third parties which have a [business] relation with the Principal.

### **Warranty**

1.34. Notwithstanding warranty provisions included in an agreement between parties, D8 will guarantee that products and services will be of good quality. D8 cannot however guarantee that the ends aimed at by the Principal will be achieved if the Principal's expectations exceed any warranted qualities or specifications stated in the agreement.

1.35. D8 guarantees that products or services delivered will conform the specifications laid down in writing in the agreement. This warranty has a validity of three months unless otherwise specified in the agreement and commences on the date The Products are delivered or services rendered.

1.36. The warranty comprises repair or substitution of defective products [or parts thereof] and correction of errors in software delivered by D8, as long as the defect is not caused by incorrect or injudicious use by the Principal. The warranty expires if repair or modifications have been made by others than D8 without D8's prior written consent. Adaptation of software to changed circumstances [e.g. modifications in hardware or operating systems] is not included in any guarantee.

1.37. Unless expressly agreed otherwise, all costs of transportation, storage, insurance, travel and other such expenditures related to any repairs or services rendered under the warranty, will be charged to the Principal.

1.38. For products or software which D8 obtains from other suppliers or manufacturers the warranty given by such supplier or manufacturer will supersede D8's aforementioned warranty.

### **Waiver**

1.39. If D8 should fail to enforce any provision included in these General Conditions or in any agreement to which these General Conditions are applicable, or if at any time D8 acquiesces in an infraction by the Principal of any such provision, this will not imply that D8 waives its rights to full performance or compensation of the infringement. Nonetheless a waiver of rights may be assumed after three years counting from the date on which fulfilment of an obligation or enforcement of a provision was claimed for the last time.

### **Disputes**

1.40. Any disputes because of or in connection with agreements to which these General Conditions are applicable will be submitted to the competent court of the domicile of D8 in the Netherlands, even if the Principal should be domiciled in another country. However D8 reserves the right to submit a dispute between parties to be decided by the competent court in the country where the Principal is domiciled or by another court

if parties so stipulate in their agreement, insofar as these choices should not be in conflict with the applicable Law or international Treaties or Conventions.

1.41. For the execution of any agreement to which these General Conditions are applicable, D8 will be domiciled at [Stephensonstraat 11] TIEL, the Netherlands.

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## **2. TERMS FOR THE SALE OF GOODS**

- 2.1. Unless otherwise agreed between parties, delivery will take place at the entrance of the Principal's premises in the Netherlands. [Place of delivery in other countries will have to be agreed upon in writing, otherwise delivery will be considered to take place Ex-Works [Incoterms 2000]].
- 2.2. If parties have agreed that D8 will install the goods at a location indicated by the Principal, the Principal will be responsible for adapting the location before the installation is taken in hand and for putting in beforehand all required conveniences/appliances as indicated by D8.
- 2.3. Any means or devices of transportation made available by D8 must be returned to D8 the day after the delivery at the Principal's costs.
- 2.4. Any goods delivered to the Principal will remain the property of D8 until full payment is received of all amounts related to the delivery. The Principal will abstain from all actions, legal or otherwise, which might prejudice D8 in the exercise of its [property] rights, until the property has passed on to the Principal through full payment of the amounts due or until D8 formally transfers these [property]rights to the Principal.
- 2.5. The risk of damages to or loss of delivered goods will pass to the Principal at the moment that these goods are put at his disposal or have been handed over to third parties on the Principal's behalf.
- 2.6. The documents supplied by D8 will prevail in cases of disagreement between parties as to the delivery time, quantity and characteristics of the delivered goods, unless the Principal can prove deviations from the descriptions included in the aforementioned documents.
- 2.7. All claims concerning immediately perceptible errors or faults in the delivered goods must be made known to D8 within eight days of delivery of the goods. After this period of time D8 cannot be held liable for such errors or faults.
- 2.8. Statements made by D8 as to the quality, applicability, characteristics and so forth of products offered by D8 only bind D8 if such statements have been explicitly made or confirmed in writing.
- 2.9. The Principal is responsible for the correct use and application of the goods delivered by D8. If user's manuals or instructions are essential for the correct use of goods delivered by D8 and these manuals or instructions are not available upon delivery, the Principal will refrain from using the goods until said manuals or instructions have been supplied.
- 2.10. The Principal will be responsible for taking all reasonable or necessary precautions for safeguarding D8's interests or rights when the Principal knows that the goods may contain trade secrets and/or confidential information pertaining to D8.

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### **3. TERMS FOR CONSULTANCY AND SERVICES**

- 3.1. The Principal is responsible for the exact description of the assignment conferred upon D8 and the procedures to be followed.
- 3.2. D8 shall carry out the assignment to the best of its ability; the Principal will render the necessary assistance and support required for the execution of the commission.
- 3.3. If the nature of the assignment should alter to the extent that the agreed duration of the assignment will be affected, the Principal will notify D8 as soon as possible. Any costs ensuing from the alteration will be borne by the Principal.
- 3.4. In case the agreed assignment will have or has had duration of more than six months, D8 has the right to adapt the prices or fees every six months in accordance with the prevailing rates.
- 3.5. The costs of services to be rendered by third parties such as keying in of data or the printing of documents as well as the cost of [computer] time and use of equipment or devices to be provided by the Principal will be borne by the Principal.
- 3.6. The Principal is responsible for keeping record of the hours spent by D8 on behalf of the Principal. Unless the Principal's records show conclusively that hours spent and invoiced by D8 are incorrect, the amounts stated in D8's invoices will be accepted as due.
- 3.7. Normal travel expenses or time spent in travelling to the Principal's place of business will be charged separately to the Principal.
- 3.8. Any work done outside normal office hours, as well as extra travel and accommodation expenses incurred in relation to the execution of the assignment will be borne by the Principal in accordance with the usual rates charged by D8.
- 3.9. If the assignment should be carried out on premises indicated by the Principal, the Principal will ensure that D8's personnel will be provided with sufficient working space and other facilities enabling them to work, consult [e.g. by telephone] and -if necessary- confer without disturbances.
- 3.10. The Principal will be responsible for access or admittance of D8 personnel to the place or places indicated by the Principal where the assignment [or part thereof] will be carried out.
- 3.11. D8 has the right to replace assigned employees by others, after duly having consulted with the Principal. D8 will bear the [additional] costs of the replacement.
- 3.12. D8 will not be obliged to immediately replace employees who are unable to work, due to illness or accident, if it is probable that the absence will not last for more than 10 working days.
- 3.13. The Principal does not have the right to instruct D8's employees to perform tasks which are not included in the assignment agreed upon between parties.
- 3.14. If D8's employees and the Principal's own employees or employees of a third party should be assigned to work on the same project, D8 cannot be held responsible for the progress or accomplishment of the project.
- 3.15. Agreements for services will be for an indefinite period of time unless a definite duration was expressly agreed upon. Agreements concluded for an indefinite period of time will be automatically prolonged every month by one month, unless renewal or timely cancellation has taken place. Termination must be notified in writing taking into account period of notice of at least one month.
- 3.16. If an agreement was concluded for a definite period of time or a fixed price, and the time or costs should be exceeded in consequence of additional wishes of the Principal, the extra work will be invoiced to the Principal at D8's usual rates; in all other cases 50% of the usual rates will be charged by D8.
- 3.17. All immediately perceptible errors or faults committed by D8 must be made known in writing to D8 within eight days of their occurrence. After this period of time D8 cannot be held liable for such errors or faults.
- 3.18. All rights -including property rights, patent and other intellectual property rights, the right to the trade mark, the rights of exploitation and so forth- appertaining to the matters resulting from or in consequence of the services rendered by D8 will belong to the Principal, unless expressly otherwise agreed between parties.
- 3.19. If an assignment comprises modification, amplification or extension of [the source-code of] software used by the Principal, the Principal guarantees that he has the right to have these interventions done, either in virtue of his ownership of the [intellectual] property-rights or on account of the pertinent permission obtained from the holder of the property-rights. The Principal will indemnify D8 against all claims on this head.

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#### **4. CONDITIONS FOR SOFTWARE LICENSES**

*In these conditions standard software will mean: standard computer software which has been developed by D8 and which is distributed as such by D8 and/or standard software [packages] by third parties which D8 may distribute. Therefore when these conditions mention D8 the original supplier of the software or the copyright owner may be intended.*

- 4.1. Under a software license agreement, D8 will only transfer to the Principal the non-exclusive right of usage. All property rights, including copyrights, the right of exploitation, patent, trademark and other rights of intellectual property pertaining to the standard software are reserved to D8.
- 4.2. The Principal does not obtain the right to make more than one copy of the standard software or the documentation delivered therewith, -these copies to be used for back-up purposes only-, nor the right to use the software on more than one computer at the same time, unless otherwise agreed upon in writing.
- 4.3. D8 has the right to suspend the right of usage conferred upon the Principal until such time that D8 shall have received full payment of all sums due in relation to the delivery of the software.
- 4.4. The risk of damage or loss of the software will pass to the Principal at the time that the software is delivered to the Principal. The moment that the software has been handed over to the Principal or a third party indicated by the Principal, will be the moment of delivery meant in the preceding sentence.
- 4.5. Any claims concerning visible or directly perceptible faults in the software must be received by D8 within eight days of the delivery, after this period of time the Principal cannot hold D8 responsible for any such faults.
- 4.6. If the standard software should be delivered in a sealed wrapping, the Principal will not break the seal unless he accepts the delivered product and thereby agrees with the respective terms of license accompanying the software.
- 4.7. D8 will only be bound by statements as to the qualities, purpose, possible applications etc. of the software if these statements were made by D8 expressly and in writing.
- 4.8. The Principal is responsible for the correct use and application of the standard software delivered by D8.
- 4.9. The Principal will be responsible for taking all reasonable or necessary precautions for safeguarding D8's interests or rights in connection with the software. The Principal acknowledges that the standard software contains trade secrets and/or confidential information pertaining to D8.
- 4.10. The Principal is not allowed to remove or alter any notices concerning copyright, trademarks or patents included in the software or inscribed or affixed on the magnetic media thereof.
- 4.11. The Principal will not reconstruct the programming source code of the software in a man-readable format, nor decompile, reverse-engineer, translate it or merge the software with other programs, whether in whole or in part.
- 4.12. The software delivered by D8 may be provided with a safety device protecting the rights pertaining to the software.
- 4.13. D8 will indemnify the Principal with regard to claims of third parties concerning their [copy]rights pertaining to the software if validated or enforced in the Netherlands.
- 4.14. Any warranties given by D8 will not be enforceable in case of incorrect or injudicious use of the software by the Principal, nor will such warranties be effective if the Principal fails to return the accompanying warranty-registration card within the stated time limit or if the requested data are incomplete.

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## **5. CONDITIONS FOR COMPUTER TRAINING COURSES**

- 5.1. Participant is: the person, who takes part in the training, be he the Principal or a third party taking part by orders of the Principal.
- 5.2. If the Principal and the participant is not one and the same person, the Principal will still be responsible for the adherence to the pertinent conditions by the participant and for the full performance of these provisions and any agreement between D8 and the Principal to which these conditions may be applicable.
- 5.3. D8 reserves the right to cancel or postpone a training course if the number of participants should, to D8's judgment, prove to be insufficient.
- 5.4. Parties, the participant included, are mutually bound to keep secret any confidential information they may obtain from the other.
- 5.5. Enrolment can only take place in writing.
- 5.6. If D8 considers a certain level of knowledge as indispensable for participation in the course, D8 has the right to refuse a participant if said participant should not possess the required schooling.
- 5.7. Any dates, times or places indicated by D8 are indicative and have been established to D8's best ability in accordance with the known circumstances. D8 will notify the Principal as soon as possible if any change of date, time or place should be necessary.
- 5.8. D8 will not be liable for any damages whatsoever ensuing from a change of date, time or place of the training course.
- 5.9. D8 will not be liable for any damages whatsoever ensuing from a change of computer or file setting, requested by participant.
- 5.10. If it is agreed that part or the entire training course will take place at Principal's place of business or another locality to be provided by the Principal, the Principal will be responsible for the availability of adequate working-space and other facilities so that the training course can be accomplished without interruption or disturbance. The Principal shall provide access and admittance to the place[s] where the training will take place.
- 5.11. The cost of materials supplied by D8 to the participants is included in the fee to be paid by the Principal.
- 5.12. All intellectual property rights -including copyrights and the right to the [technical] know-how- appertaining to the materials supplied by D8 to the participants are reserved to D8, unless otherwise agreed upon between D8 and the Principal in writing.
- 5.13. Neither the Principal nor the participant may copy the materials supplied by D8 in any way, unless otherwise agreed upon in writing.
- 5.14. D8 will provide the participant -after he has successfully completed the training course- with a diploma, a testimonial or a certificate of participation, depending on the type of course completed.

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## **6. CONDITIONS FOR SOFTWARE-MAINTENANCE**

- 6.1. Maintenance comprises the repair -as soon as possible- of faults in software for which maintenance has been agreed upon, and which faults prevent the normal usage of such software.
- 6.2. If a software-maintenance agreement has been entered into between D8 and the Principal, D8 will for the duration of the contract, provide all necessary maintenance without additional charge for time spent when a failure is caused by a fault in the software and as long as the software has been used in accordance with its purpose and under normal conditions. The Principal will inform D8 of any failures as soon as possible, during normal business hours and provide D8 with a detailed description of the failure. D8 may perform the necessary maintenance at the Principal's place of business if so requested. The Principal will be charged the standard travelling time and costs mentioned in the maintenance-agreement for each visit by D8's personnel to the Principal's premises. Adapting the software in consequence of changed conditions [e.g. a modification in the hardware or the operating system on which the software is run] is not included in the maintenance.
- 6.3. Services performed outside normal office hours, extra expenditures made on request of the Principal and additional services not included in the maintenance agreement but rendered on request will be charged separately to the Principal at D8's current rates.
- 6.4. The Principal will loose all claims to maintenance ensuing from a maintenance agreement in case of inexpert or injudicious use of the software by the Principal and/or negligence on the Principal's part, or if modifications to the software have been made by others than D8. The Principal may not claim free repairs if a failure is due to: external causes [fire etc.]; adverse influences originating from hardware or other software; incorrect installation; abnormal fluctuations of electrical supply etc.
- 6.5. D8 may determine that part of the software will be excluded from the maintenance. Such exclusions will be stated in writing at the time of the conclusion of the agreement.
- 6.6. Should no separate maintenance agreement have been concluded between D8 and the Principal and D8 renders maintenance services, the Principal will pay D8's current rates for the time employed in the rendering of the services. The Principal will provide D8 with a detailed description of the failure. Upon the Principal's request D8 will perform the maintenance at the Principal's place of business in which case The Principal will be charged D8's current standard travelling time and costs for each visit by D8's personnel to the Principal's premises.
- 6.7. D8 may retain software or other goods belonging to the Principal which D8 may have in its possession as security against payment of all sums which the Principal may owe to D8 for services rendered by D8 with regard to such software or other goods, until all sums due have been paid.
- 6.8. If the maintenance should have to be carried out on the Principal's premises, the Principal will provide D8's personnel with sufficient working space and other necessary facilities as well as access or admittance to the place or places where their presence is required in order to carry out the services.
- 6.9. All immediately perceptible errors or faults committed by D8 must be made known in writing to D8 within eight days of their occurrence. After this period of time D8 cannot be held liable for such errors or faults.
- 6.10. All rights -including property rights, and any intellectual property rights- appertaining to the matters resulting from or in consequence of the services rendered by D8 will belong to the Principal, unless expressly otherwise agreed between parties.
- 6.11. D8 cannot be held responsible for any loss of or damages to data or information and such inscribed on magnetic media; the Principal is obliged to implement all necessary preventive measures thereto.
- 6.12. The risk of loss or damages to software and/or hardware entrusted to third parties -for transportation or other ends- will be carried by the Principal. D8 will only carry such risk during the time that the software and/or hardware is/are in its keeping.

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