

# GENERAL TERMS & CONDITIONS

IIZT b.v. Version 4, February 2011

Having its registered office and business address at: – Prinseneiland 303, 1013LP Amsterdam, The Netherlands

## 1. Scope

The General Terms and Conditions shall apply between IIZT and the Client to all (oral or written) offers, bids and contracts in the broadest sense of the word.

These General Terms and Conditions consist of 4 pages. IIZT B.V. will be mentioned as 'user' or 'IIZT'.

## 2. Cross-Browser/E-mail Client Compatibility

Unless otherwise specifically requested, IIZT shall provide for the production of the Web Project compatible with the most common browsers and e-mail clients. For browsers, Projects will be compatible with Mozilla Firefox 3.0 and above; with Microsoft IE 7.0 and above on Windows; with Safari 2.0 on Mac (please note that Mac compatibility does not apply to content management system interfaces, unless explicitly agreed upon in the project contract). For e-mail clients, the layout of HTML e-mails will be compatible with Mozilla Thunderbird 2.0 and above; with MS Outlook 2000 and Outlook Express 2000 and above; and with the current versions of Hotmail, Yahoo! Mail, and Gmail. Compatibility is defined as meaning all critical elements of each page being viewable per the original design.

## 3. Technology

In case of the Web Project for the client, IIZT will make use of Open Source platforms and technologies. But technologies specifically chosen in proposals are leading.

## 4. Pricing / Payment Terms

The prices and rates shall be inclusive the work to be carried out by IIZT as described in the offer, bid or contract. All prices and rates shall be exclusive of sales tax (VAT) and other governmentally-imposed charges and do not include a compensation for packaging, import, transport, travel and accommodation expenses, office costs, (technical) documentation, audio and/or visual material of third parties, purchase of hardware, software of third parties, training of the Client, installation, implementation and the like, unless as indicated otherwise in the offer, bid or contract. All invoices shall be paid by the Client in accordance with the payment conditions as stated on the invoice. In the absence of specific conditions, the Client must make payment no later than thirty days after the invoice date hereinafter: 'the payment period'.

If payment is not made in the payment period, the Client shall be in default by operation of law and IIZT shall impose a late-payment interest fee of 1.5% per month (one point five percent), calculated over the period the Client is in default, all of this without any further notice of default or court intervention being required. The Client is also expected to pay any cost involved to get the cash paid and instructing of and execution by companies or individuals that are told to get the cash in on behalf of IIZT and other costs caused by late payment, with a minimum of 10% of the original invoice amount.

## 5. Assignment of Project

IIZT reserves the right to assign certain subcontractors/ network agencies to the Project to insure the best execution of the job as well as on-time completion. IIZT warrants all work completed by subcontractors for the Project.

## 6. Client Cooperation

The Client shall always grant the requisite cooperation and deliver all the requisite data, information, documentation, materials software of third parties, assets and/or other prerequisites which will be described in writing by parties (hereinafter: the prerequisites) for the proper performance of the contract available to IIZT in a timely manner.

Furthermore the Client will inform IIZT in time about his decisions, evaluate received documents on time and furnish all the requisite co-operation in order to enable IIZT to meet the delivery date. The Client guarantees IIZT that the former is entitled to dispose of the prerequisites it has made available to IIZT and shall indemnify IIZT against all liability in that regard.

## 7a. Copyrights and Trademarks

The Client assumes whole and entire responsibility for the copyright and trademark of any and all data appearing on the delivered Project. The Client represents to IIZT and unconditionally guarantees that any elements of text, graphics, photos, designs, fonts, sounds, music, trademarks, or other work furnished to IIZT for inclusion in the Client's Project are owned by the Client, or that the Client has permission from the rightful owner to use each of these elements.

Further, the Client will hold harmless, protect, and defend IIZT and its subcontractors from any claim or suit arising from the use of such copyrighted or trademarked elements as furnished by the Client.

## **7b. Intellectual Property and Copyrights**

1. Without prejudice to the other stipulations of the present general terms and conditions, user shall reserve the rights and authorities to which user is entitled under the Copyright Act.
2. The Client shall not be allowed to introduce changes to the goods and material provided, unless the nature of the delivered goods and material dictates otherwise or if agreed upon otherwise in writing.
3. The designs, sketches, drawings, films, software and other material or (electronic) files, possibly produced by the user within the framework of the agreement, shall remain user's property, irrespective of the fact whether they have been handed over to the Client or to third parties, unless agreed upon otherwise in writing.
4. All documents, such as designs, sketches, drawings, films, software, (electronic) files, etc., provided by user, shall be destined to be used by Client exclusively and must not be reproduced, made public or brought to the notice of third parties by Client without prior consent from user, unless the nature of the documents provided dictates otherwise.
5. User shall reserve the right to use the knowledge gained due to the execution of the work for other purposes, in so far no confidential information shall be brought to the notice of third parties when doing so.

## **8. Limited Liability**

- a. The Client agrees that any material submitted for online publication will not contain anything leading to an abusive or unethical use of a Web hosting service, the host server, IIZT or its warranted subcontractors. Abusive or unethical materials and uses include, but are not limited to: obscenity, hate propaganda, computer viruses, harassment, any illegal activity, advocacy of any illegal activity, spamming, warez, or any infringement of privacy. With the exception of situations arising as the result of gross negligence by IIZT, the Client hereby agrees to indemnify and hold harmless IIZT from any claim resulting from the Client's publication of material or use of those materials. It is also understood that the Client will not publish information over the Internet, which may be used by one party to harm another. IIZT reserves the right to determine what is and is not abusive or unethical materials.
- b. IIZT shall accept no liability whatsoever for the total or partial loss of content and/or data.
- c. The Client shall indemnify IIZT against all claims by third parties on the grounds of product liability resulting from a defect in a product or system that the Client has supplied to that third party and that consists (in part) of equipment, software or other materials supplied by IIZT, except if and to the extent that the Client proves that the damage has been caused by said equipment, software or other materials.
- d. Liability of IIZT on the grounds of a breach of contract shall arise only if the other party sends the breaching party written notice of default without delay, and sets a reasonable term in which the breaching party may as yet rectify its default, and the breaching party then continues to be in default after the expiry of said term. The notice of default must contain as detailed a description as possible of the breach so as to enable the breaching party to respond adequately. IIZT's total liability on the grounds of a breach on its part in performing a contract or otherwise shall be limited to the payment of compensation for direct damage up to the amount of the price agreed for that contract and the payments made till that moment, not including VAT.
- e. If the contract is mainly a long-term contract with a term of more than one year, the agreed price shall be set at the total amount of the payments, not including VAT, agreed for a year, subject to a maximum of the total of that year's sum.
- f. IIZT will perform its services to the best of its ability. If an error or glitch was made because the Client has given wrong, inaccurate or late information to IIZT, IIZT cannot be held responsible for any damage that arose as a consequence.
- g. The direct damage can only mean the reasonable costs that the Client would have to make to make the performance meet the agreement with IIZT- which damage will not be refunded or paid in case the agreement was stopped or broken by the Client – as well as the reasonable costs that the Client had to make for keeping the old system running out of urgency because IIZT has not met a delivery date that both parties have explicitly agreed upon as being a fatal one, reduced by with possible savings because of the delayed delivery, and the reasonable costs made to limit or stop damage, for as far as the Client proves that these costs have realized a reduction of direct damage according to these rules.
- h. IIZT is not responsible for indirect damage, as described as follows but definitely not limited to loss of profits, consequential damage, missed savings, and damage by business stagnation, damage as a result of claims by clients of Client, damage or loss of data.
- i. Unless in the cases written before where liability might be accepted IIZT takes no responsibility for damage, no matter what ground an action to compensation was based upon. The condition that might lead to indemnification for damage is always that the Client hands over a written declaration of damage to IIZT within 14 (fourteen) days after damage was caused.
- k. Client holds IIZT free of any claims for product or service liability because of a defect in a product or service that was supplied by Client to a third party and that might have contained computer programs, software or other programmed units or any other products or services supplied by IIZT.
- l. Client holds IIZT free of any claims by any person of whom personal details are registered or will be processed because of a person registration procedure installed by the Client or for any such thing the Client is responsible for by law or regulations, unless the Client proves that these facts are an integral part of the agreement and should be totally

addressed to IIZT.

m. The liability of the IIZT for damage by death or physical damage or for material damage of things will never be over € 1.000.000,- (one million euro).

### **9. Force majeure**

In the case of an event of force majeure, that is to say, a breach the cause of which does not lie with one of the parties, for which it is not at fault and for which it is not accountable by statute or pursuant to generally accepted standards, the party concerned shall notify the other party thereof in writing, stating the cause, nature and expected duration of the event and the provisions of the contract which it will not be possible to perform as a result. Performance of the relevant provisions shall be postponed for the duration of the event of force majeure.

If the event of force majeure lasts until two months after the date of the aforesaid notification, the parties shall endeavour to reach agreement about amending the provision(s) in the contract that have been postponed as a result of the event. In the absence of such agreement being achieved within one month, either party may terminate the contract, without being obliged to pay the other party any kind of compensation. IIZT shall, however, retain the right to receive payment for the goods already supplied and work or services already provided.

### **10. Indemnification**

With the exception of situations arising as the result of gross negligence by IIZT, the Client agrees that it shall defend, indemnify, save and hold IIZT harmless from any and all demands, liabilities, losses, costs and claims, including reasonable attorney's fees, associated with IIZT's development of the Client's Project. This includes, but is not limited to, liabilities asserted against IIZT, its subcontractors, its agents, its Clients, servants, officers and employees, that may arise or result from any service provided or performed, or agreed to be performed, or any product sold by the Client, its agents, employee or assigns. The Client also agrees to defend, indemnify and hold harmless IIZT against liabilities arising out of any injury to person or damage to property caused by any products or services sold or otherwise distributed over the Client's website. This includes but is not limited to infringing on the proprietary rights of a third party, copyright infringement, and delivering any defective product or misinformation which is detrimental to another person, organization, or business.

### **11. Laws Affecting Electronic Commerce**

The Client agrees that it is responsible for complying with the laws, taxes, and tariffs related to e-commerce, and will hold harmless, protect, and defend IIZT and its subcontractors from any claim, suit, penalty, tax, or tariff arising from the Client's use of Internet electronic commerce. The Client understands that IIZT cannot provide legal advice.

### **12. Ownership of the Completed Project**

Ownership of all rights of Intellectual Property, amongst which Copyright, that will exist on the software, projects, programs etc made by IIZT by order of the Client, will remain with IIZT, unless parties agree in a different way beforehand by written notice. IIZT is entitled to keep one copy of the supplied product as well as the source code belonging to it.

The Client gets the exclusive right of use on the supplied products as a whole, this will come into effect however only when the Client has fully and timely fulfilled all its parts of its contractual and legal obligations that rest upon the Client. Should materials created by IIZT be used on the Web or otherwise by the Client before the tender of payments, then Client is in breach and appropriate penalties will apply.

### **13. Nondisclosure**

IIZT, its employees and subcontractors, agree that, except as directed by the Client, it will not at any time during or after the period of this Co-operation disclose any confidential information to any person whomsoever. Likewise, the Client agrees that it will not convey any confidential information obtained about IIZT, its processes, its employees, or its contractors to another party.

### **14. Completion Date/ Delivery of projects**

IIZT and the Client must work together to complete all Projects in a timely manner for both parties to remain profitable. IIZT agrees to work expeditiously to complete Projects as reflected in the Project Plan/ Roadmap.

If IIZT executes any specific changes in and/or additions to the specifications for the work to be supplied by IIZT, and does so at the request of the Client, IIZT may – having first consulted the Client – postpone the delivery date of the Work to the extent that this is required in order to execute the relevant changes or additions.

Except upon the basis of any intentional act or omission or gross negligence on the part of IIZT, IIZT's mere failure to meet any delivery deadline shall not put IIZT in default and shall not entitle the Client to dissolve the contract. The parties shall then consult as soon as possible in order to set a new deadline for delivery.

### **15. Warranty**

For a period of one month after delivery or, if agreed on, the expiry of a test period, IIZT shall remedy for free any defects in the software/ the website as a result of its not satisfying the specifications, if and to the extent that it is

notified of these defects in writing by the Client within this period. IIZT does not warrant that the software will operate without interruption and/or defects and/or that it will be possible to repair all defects.

The Client shall be responsible for the correct and judicious use/application of the software, as well as having control and security procedures and effective system management in place.

The warranty obligations shall lapse if the Client has made or has had changes made to or in the software without Supplier's prior written consent. The restoration of damaged or lost data shall not fall within the scope of the warranty obligations.

Defects shall be repaired at a location to be determined by IIZT. IIZT shall be entitled at its own discretion to introduce definitive or temporary solutions or program detours and/or problem- avoiding restrictions into the software.

After expiry of the warranty period described in this Article, IIZT shall not be obliged to repair any defects in the Software/ the website, unless the parties have concluded a maintenance or service level contract for this purpose.

## **16. Commencement, Cancellation and Postponement**

The obligations listed in these Terms come into effect upon entering into an agreement with IIZT. Projects may be cancelled at any time at the request of either the Client or IIZT and may include, but are not limited to, the selling/ take-over of IIZT to/ by another organization, agency, agency network.

Cancellations must include a valid reason and a reasonable notice period, given the duration, financial value of the project and other circumstances. If the given reason is not valid and the notice period is not reasonable, the party that has made the cancellation is liable for the damage suffered by the other party, including, but not limited to, loss of profit. If the given reason and notice period are valid and reasonable, neither of the parties is liable for any damage. Cancellation requests will be made on signed letterhead and delivered by registered post.

IIZT understands that circumstances may arise that cause the Client to postpone work once the Project has commenced. In the event the delivery date of the Project is postponed at the request of the Client, IIZT agrees to wait for a maximum period of thirty (30) days from notification by the Client for recommencement. If the Client has not advised IIZT to re- commence work on the Project by the end of this period, the Project will be considered as cancelled. In this case, IIZT must be compensated for damage, including, but not limited to loss of profit, besides payment for the work already performed. The Project can be postponed a maximum of 1 time.

## **17. Entire Understanding**

Together with the Work Order of individual Projects, these Terms constitute the sole agreement between IIZT and the Client with respect to Projects. It is the spirit of these terms that this co-operation will be mutually beneficial for the Client and for IIZT. Both parties warrant that they have read and understand the terms set forth herein. These terms shall be governed and construed in accordance with the laws of the Netherlands.

## **18. Disputes**

1. Any conflict arising from either the contract between parties, or these terms, will be referred exclusively by the court in Amsterdam, including the cantonal court and any provisional judgements.
2. Parties shall only refer the matter to the court if they have done their utmost to solve the dispute in mutual consultations.

## **19. Applicable Law**

Dutch law shall apply to these terms and to each and every agreement between IIZT and the Client.

## **20. Changes to the Terms and Conditions, interpretation and their location**

The present terms and conditions have been filed at the office of the Chamber of Commerce in Amsterdam.

The Dutch version of these general terms and conditions prevails at all time in case of disputes with regard to the interpretation and purpose of these terms and conditions.

The most recently filed version shall always apply, or, as the case may be, the version valid at the time the agreement was concluded.

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