




Tebodin Netherlands B.V.
info@tebodin.com • www.tebodin.com

General Conditions for Purchase of Software (GC-4)
23 July 2009

3	23-jul-2009	General use	R. Hoevenaars	FVI 
Rev.	Date	Description/published for	Author	Appr.



1 Definitions

CLIENT means the party purchasing the SOFTWARE, being the legal entity as mentioned in the Purchase Order, as well as his legal successors in title;

VENDOR means the party supplying the SOFTWARE;

SOFTWARE means the delivery of software, all documentation belonging thereto and the implementation thereof on the computer system of CLIENT, all in accordance with the CONTRACT;

CONTRACT consists of the Purchase Order signed by CLIENT and VENDOR, all listed documents mentioned in the Purchase Order, and any special agreements made between CLIENT and VENDOR.

2 Conflicts

Where conflicts occur between or within the contents of the CONTRACT, codes and/or regulations, the most stringent and/or severe requirements for the VENDOR apply. In case of doubt VENDOR shall timely inform CLIENT and CLIENT will thereupon indicate the applicable condition.

3 Laws

- a) VENDOR warrants that all SOFTWARE will comply with all applicable codes, laws and regulations.
- b) VENDOR shall indemnify, exonerate and hold CLIENT free and harmless from and against any liability, or penalty imposed upon CLIENT, resulting from each contravention or alleged contravention of the applicable codes, laws and regulations.

4 Inclusions

All costs of the supply and labour as well as implementation of the SOFTWARE and/or other requirements for supply as laid down in the CONTRACT and as required by applicable codes, laws and regulations are included in the contract price, unless specifically stated otherwise in the CONTRACT.

5 Changes to CONTRACT

CLIENT is at all times entitled to modify the SOFTWARE. Changes will be settled in accordance with the CONTRACT or – if not mentioned therein – will be agreed upon between CLIENT and VENDOR. No substitution or modification by the VENDOR will be permitted except on specific written authority of CLIENT.

6 Expediting

VENDOR warrants the timely performance of all of its obligations in accordance with the CONTRACT. If VENDOR encounters delays in obtaining materials and deliverables from his sub-suppliers or in receiving information from CLIENT, VENDOR shall immediately advise CLIENT.

7 Tests

- a) The implementation of the SOFTWARE is completed when VENDOR - in presence of CLIENT - has demonstrated that the implemented SOFTWARE functions are in accordance and comply with the CONTRACT. The SOFTWARE is deemed to have been placed in use from the time that the implementation has been tested successfully according to CLIENT.
- b) If implementation by VENDOR is no part of the work to be performed by VENDOR under the CONTRACT, VENDOR agrees that:
 1. within a reasonable time after the supply of the SOFTWARE, CLIENT can perform tests in order to check whether the SOFTWARE complies with the CONTRACT;
 2. VENDOR - if CLIENT establishes that such compliance does not exist - shall at his own expense promptly take all measures necessary to ensure said compliance as yet, after which CLIENT can repeat said tests on the same conditions and at VENDOR's expense;
 3. failure to test by CLIENT and/or any other authority designated by CLIENT, shall not relieve VENDOR of any responsibility or liability with respect to the SOFTWARE nor be interpreted in any way to imply acceptance thereof by CLIENT.

If the implementation by VENDOR is no part of the work to be performed by VENDOR under the CONTRACT, the SOFTWARE is deemed to have been placed in use at the time of supply, unless it should appear within a reasonable time thereafter that the SOFTWARE does not comply with the CONTRACT. In that case the SOFTWARE is deemed to have been placed in use at the time that the SOFTWARE as yet complies with the CONTRACT.



8 Guarantees

- a. The SOFTWARE, the implementation and possible corrective work shall comply and be performed in accordance with the CONTRACT and with the requirements and state of the art standards at the time of supply (or making available), implementation and corrective work respectively.
If the SOFTWARE or any part thereof and/or the implementation and/or the possible corrective work is found not to be in accordance with the CONTRACT or such requirements and standards at any time before or within twelve (12) months from the date the SOFTWARE has been placed in use, VENDOR shall at his own expense immediately take all measures necessary to ensure compliance of the SOFTWARE therewith as yet.
- b. The SOFTWARE shall be free of defects originating from faults in the design and/or material. If the SOFTWARE or any part thereof is found to be defective at any time before or within twelve months from the date the SOFTWARE has been placed in use, VENDOR shall without delay and at his own expense correct these defects.
- c. In case material faults result in the non-functioning of the SOFTWARE or any part thereof for consecutive periods of 12 hours or longer, these periods shall be accumulated and the guarantee period shall be extended with the total amount of hours of these periods. If the total of these periods amounts to ten (10) working days or more, provided that they result from the same fault, the guarantee period shall start again on the date the completely corrected SOFTWARE is put in use.
- d. In case a fault in the design results in failure of the SOFTWARE or any part thereof, the guarantee period shall start again on the date the completely corrected SOFTWARE is put in use.
- e. CLIENT will inform VENDOR of every defect as soon as possible after it is known to CLIENT.
- f. If VENDOR in violation of the obligations mentioned above does not timely take measures, CLIENT will take or have taken the required measures under VENDOR's responsibility and at VENDOR's expense.

9 Loss or damage

Up to the time that the SOFTWARE is placed in use, VENDOR carries the risk of loss of and damage to the SOFTWARE or any part thereof. If loss or damage occurs after this time, CLIENT is entitled against payment of the material cost and in case of damage on submission of the damaged SOFTWARE, to obtain a new copy to be provided by VENDOR.

10 General liability

With regard to the services rendered by VENDOR, his sub-suppliers, agents or employees in respect of the supply, implementation, placing in use, instruction, correction, etc., VENDOR agrees to indemnify CLIENT with respect to all damage and/or injury or death resulting from acts of VENDOR, his sub-suppliers, his agents or employees, while on the premises of CLIENT.
VENDOR indemnifies CLIENT from all claims, suits, actions and proceedings whatsoever, including those on account of damage and/or injury or death on the side of VENDOR, his agents or employees or other persons on account of said acts.

11 Passing of ownership

The ownership of the SOFTWARE shall at the latest pass to CLIENT at the time of supply.

12 Errors in delivery

SOFTWARE delivered or made available in error or SOFTWARE deliverables in excess of the quantity called for in the CONTRACT will be returned at VENDOR's expense and risk.

13 Payment

VENDOR shall submit a separate invoice for each payment due in accordance with the payment conditions stated in the CONTRACT. Invoices will be paid in accordance with the payment terms included in the Purchase Order, or, in addition to or failing such payment terms, within 45 days computed from the date of VENDOR's fulfilment of the specified conditions and the date of receipt of VENDOR's invoice, provided such invoice is properly drawn and accompanied by the required supporting documents. If invoices and/or supporting documents require correction the time of payment will be computed from the date of receipt of the corrected invoice and/or documents.

14 Use of software

VENDOR warrants that the free and unrestricted use of the SOFTWARE by and for the benefit of CLIENT, for the purpose for which the CONTRACT was concluded, is permitted.



15 Copies

For back-up purposes and for internal use CLIENT is permitted to reproduce the SOFTWARE in whole or in part.

16 Escrow

- a) On CLIENT's first request, an escrow agreement will be concluded between VENDOR, CLIENT and an escrow party to be designated by CLIENT with regard to SOFTWARE, which is placed at CLIENT's disposal and of which the intellectual (property) rights are not CLIENT's and which to CLIENT's judgement are suitable for depot in escrow.
- b) Each party bears her own costs for concluding the agreement as mentioned under sub a). All other costs related to this escrow agreement are for CLIENT's account.

17 Developments

VENDOR shall promptly inform CLIENT of any new software development and immediately offer to CLIENT updated, enhanced and completely new versions of the SOFTWARE for a price as stated in the CONTRACT, or such other price to be mutually agreed upon. Use of the original version of the SOFTWARE remains permitted.

18 Assignment

Neither the CONTRACT nor any interest therein shall be assigned or transferred to a third party by VENDOR except with the prior written approval of CLIENT.

19 Rights of third parties

- a) VENDOR shall indemnify, exonerate and hold CLIENT, free and harmless from and against any claims, demands, costs, injunctions and costs arising from or incurred by an infringement or alleged infringement of any letters of patent, copyrights, registered trade names or any other rights of third parties, in connection with the SOFTWARE or any part thereof supplied or made available under the CONTRACT.
VENDOR shall be notified of such claims as soon as possible. VENDOR shall in his own name and for his own account act in the legal proceedings or prevent or end them by means of a compromise or where appropriate by means of a settlement.
- b) If within or without legal proceedings it is found that the SOFTWARE or any part thereof infringes any intellectual proprietary right and as a result thereof CLIENT is not permitted to use the SOFTWARE, VENDOR shall for his account and in consultation with CLIENT either:
 - procure for CLIENT the right to continue using the SOFTWARE or the relevant part thereof;
 - replace the relevant part of the SOFTWARE with a non-infringing part which achieves the same result as the initial SOFTWARE;
 - modify the SOFTWARE so it becomes non-infringing;
 - take back the SOFTWARE or any part thereof on reimbursement by VENDOR of the purchase price, expenses, damages and interest.

Modification and/or replacement may not result in SOFTWARE that does not comply with the requirements of the CONTRACT.

20 Confidentiality

All engineering data, designs, drawings and other documents supplied to the VENDOR by the CLIENT are confidential and shall not be used for any purpose whatsoever other than in connection with the VENDOR's obligations under the CONTRACT. Also VENDOR shall not get into any of CLIENT's data, which is not required for the execution of the work. Unauthorized entrance or distribution is a reason for termination of CONTRACT.

21 Immediate termination

- a) Should CONTRACTOR, after ENGINEER's or CLIENT's demand for remedial action, in the opinion of ENGINEER or CLIENT not execute the WORKS or part thereof in accordance with the CONTRACT, then CLIENT may terminate the CONTRACT or any part thereof. If CONTRACTOR becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him or if a winding up petition is submitted, CONTRACTOR is also considered to be in default. In such case CLIENT may immediately (partially) terminate the CONTRACT.
CLIENT may at any time terminate the CONTRACT or any part thereof for any reason crucial to CLIENT.



- b) If the CONTRACT's obligations include the transfer of ownership of the SOFTWARE to CLIENT, CLIENT is, if exercising his right under a., entitled to take over wholly or partially the SOFTWARE already delivered.
In that case CLIENT shall pay to VENDOR and VENDOR shall accept payment of that part of the purchase price that corresponds with the accepted SOFTWARE, without prejudice to any other rights CLIENT may have under this CONTRACT and/or the applicable law.

22 Termination by CLIENT for other reasons

CLIENT may terminate the CONTRACT in whole or in part by written notice to VENDOR. In such event CLIENT shall make payment to and VENDOR shall accept payment of that part of the purchase price(s) that corresponds with the part of the CONTRACT already executed at the date the termination becomes effective.

In case of termination for cause or for convenience, VENDOR will at CLIENT's request assign to CLIENT - to the extent required by CLIENT - the sub-contracts to the CONTRACT entered into by VENDOR.

23 Force Majeure

- a) Force Majeure is defined as an occurrence which is not for the risk of the party affected and which cannot be reasonably foreseen, controlled or prevented and materially affects the execution of the CONTRACT. Reasons like ordinary hazards of shortage of labour or material or transport, rejection of material, strikes other than general strikes, default of sub-suppliers, price or wage increase, etc., shall not be considered as Force Majeure.
- b) If and as far as compliance with the contractual obligations is not possible as a result of Force Majeure, compliance of such obligations shall, provided that the party affected has timely notified the other party and proven such occurrence, be suspended for the duration of the Force Majeure. In that case the corresponding obligation of the other party shall be suspended for the same time.
- c) No financial claims based on Force Majeure against CLIENT and/or VENDOR may be submitted or maintained.

24 Publicity

Without CLIENT's prior written approval VENDOR shall not make public any details of the CONTRACT and/or CLIENT.

25 Disputes

All disputes arising in connection with the CONTRACT, which cannot be settled amicably, shall be finally settled by the competent civil court in The Hague, the Netherlands, or, if CLIENT so prefers, by three arbitrators in accordance with the rules of the Netherlands Arbitration Institute (*Nederlands Arbitrage Instituut*). In case of arbitration, place of arbitration shall be The Hague, the Netherlands. Upon VENDOR's request CLIENT will inform VENDOR within one month of his choice. Unless expressly agreed in writing by the CLIENT, VENDOR shall not for reason due to disputes and/or proceedings delay or suspend the execution of the CONTRACT.

26 Governing law

The Contract shall be construed, interpreted and applied in accordance with the laws of the Netherlands. The "United Nations Convention on Contracts for the International Sale of Goods" (Vienna, 11 April 1980) will not be applicable.

27 Language

All correspondence and documents in connection with the CONTRACT shall be in the English language.