



## GENERAL CONDITIONS

**Delta-N**

Version 2016



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## 1. General

### 1.1 Applicability

1.1.1 These conditions are applicable to all proposals and/or deliveries made by Delta-N and agreements and/or legal relationships between Delta-N and Customer.

1.1.2 **Purchase conditions or any other conditions used by Customer will not be applicable.** The applicability of purchase conditions or any other conditions from Customer or from third parties on behalf of Customer is therefore expressly rejected by Delta-N, unless explicitly accepted in writing by Delta-N.

1.1.3 Delta-N reserves the right to make alterations and/or additions to the General Conditions Delta-N. The modified General Conditions Delta-N will become applicable, unless objections against modifications are made in writing within 30 (thirty) days of the notification date of the change.

1.1.4 Changes in and additions to the General Conditions Delta-N and/or agreements made between Delta-N and Customer are only valid when agreed to by Delta-N in writing.

1.1.5 If the business name used by Customer denotes more than one (legal) person or organization, each will be responsible for the entire fulfillment of the obligations that may flow forth from the agreement with Delta-N.

1.1.6 The headings above the clauses of these conditions are only intended to increase the legibility of this document. The content and meaning of a clause placed under a particular heading is, therefore, not limited to the meaning and content of the heading.

### 1.2 Definitions

#### 1.2.1 Usage words and terms:

In the General Conditions Delta-N the following words and expressions are capitalized. Any of the following words and expressions shown in the singular shall have the same meaning when used in the plural and vice-versa.

#### 1.2.2 Advance:

As further specified in clause **Error! Reference source not found..**

#### 1.2.3 Applicatie Software:

The application which provides users with a certain functionality. This can be either a (software) Delta-N Product, a (software) Third Party Product or software of Customer or of a third party licenced to Customer.

#### 1.2.4 Back-up:

Spare copies of digital data and/or information.

#### 1.2.5 Business Days:

Normal Dutch working hours (8.30-17.30 CET) and days (Monday through Friday) with the exception of public holidays.

#### 1.2.6 Customers:

Anyone who requests and orders the delivery of Products and Services.

#### 1.2.7 Courses:

All courses, trainings and related activities.

#### 1.2.8 Datacenter:

A datacenter is a facility where servers can be connected to a network-environment, i.e. the Internet. A part of the Infrastructure is located in one or more datacenters.

#### 1.2.9 Delta-N:

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

#### 1.2.10 Delta-N Products and Services:

All products and services provided by Delta-N and the resulting provisions and related activities, which do not originate from third parties and whose intellectual property

rights, industrial property rights and other rights are held by Delta-N.

#### 1.2.11 Error:

As further described in clause **Error! Reference source not found..**

#### 1.2.12 Fair Use:

The reasonable use by Customer of the Products and Services.

#### 1.2.13 Feasibility Study:

As further described in clause 6.1.1.

#### 1.2.14 Fixed Price:

As further described in clause 7.3.

#### 1.2.15 Hosting:

The provision of, maintenance of, and/or providing access to webspace for the purpose of saving en/or providing information and/or Application Software on the Delta-N Infrastructure or Third Party Infrastructure, which are placed at Datacenters.

#### 1.2.16 Hosting Services:

The common definition of IaaS, PaaS and SaaS.

#### 1.2.17 IaaS:

(Infrastructuur as a Service) constitutes the direct and/or indirect (through a Third Party) provision by Delta-N of Infrastructure and infrastructure software via Hosting.

#### 1.2.18 Identification Codes:

Usernames, passwords, address codes and/or other codes.

#### 1.2.19 Infrastructure:

The set of IT facilities such as hardware and software (including cables) which is used for the processing of data. Infrastructure includes Delta-N Infrastructure, Third Party Infrastructure, customer Infrastructure, and Public Infrastructure.

#### 1.2.20 Maintenance:

As further described in clause **Error! Reference source not found..**

#### 1.2.21 Object Code:

The computer programming code substantially in binary form. It is directly executable by a computer after processing.

#### 1.2.22 PaaS:

(Platform as a Service) constitutes the direct en/of indirect (through Third Parties) provision of platform software by Delta-N via Hosting.

#### 1.2.23 Proces-data:

The data entered within the SaaS-service by Customer and/or data entered by third parties.

#### 1.2.24 Products and Services:

All Delta-N Products and Services and/or Third Party Products and Services provided by Delta-N, the resulting provisions and related activities. SaaS is considered a Product and Service.

#### 1.2.25 Public Infrastructure:

The part of the Infrastructure maintained by third parties and/or delivered to Customer via Delta-N. Delta-N has no control over this part of the Infrastructure.

#### 1.2.26 SaaS:

(Software as a Service) constitutes the direct and/or indirect (through a third party) provision of Application Software via Hosting by Delta-N.

#### 1.2.27 Source Code:

The computer programming code that may be displayed in a form readable and understandable by a programmer of ordinary skill. It may include related Source Code level system documentation and comments. Source Code does not include Object Code. Source Code of Delta-N or of third parties will not be provided to Customer, unless otherwise



- agreed upon in writing.
- 1.2.28 Subsequent Calculation:**  
As further described in clause **Error! Reference source not found..**
- 1.2.29 Support:**  
As further specified in clause 2.5.
- 1.2.30 Third Party General Conditions:**  
Third Party General Conditions are conditions applicable to Third Party Products and Services.
- 1.2.31 Third Party Infrastructure:**  
The part of the Infrastructure administrated by a third party and/or delivered to Customer via Delta-N. This is a Third Party Product and Service.
- 1.2.32 Third Party Products and Services:**  
All products and services provided by Delta-N, the resulting provisions and related activities, which originate from third parties and whose intellectual property rights, industrial property rights and other rights are not held by Delta-N.
- 1.2.33 Warranty ("Garantie"):**  
As further described in clause **Error! Reference source not found..**
- 1.3 Confirmation**
- 1.3.1** Verbal agreements, assignments or other expressions of whatever nature by employees of Delta-N are only valid and binding when they have been confirmed in writing by authorized representatives of Delta-N.
- 1.4 Offers**
- 1.4.1** All offers made are without engagement, unless the offer explicitly indicates otherwise in writing.
- 1.4.2** Offers are based on the data, information or requirements made known by Customer as set out in clause 1.6.
- 1.5 Agreements**
- 1.5.1** An agreement between Delta-N and Customer, for which no further contract and/or term has been agreed, has a term of 1 (one) year if the delivery concerns a Product for which a periodic fee is charged such as but not limited to Maintenance and Support. If this agreement is not terminated ("opzegging") or not timely terminated, it shall be extended repeatedly in increments of 1 (one) year.
- 1.5.2** Termination of the agreement as described in clause 1.5.1 occurs by means of a registered letter, which must be received by the other party no later than 40 (forty) days prior to commencement of the extension date of the agreement.
- 1.5.3** Each party has the right to terminate the agreement wholly or partially without judicial intervention by means of a signed registered letter. This can be done if, after notifying the breaching party in writing of a failure to fulfill its obligations, the breaching party then fails to meet the aforesaid obligations within a reasonable period of time.
- 1.5.4** Delta-N has the right to immediately terminate the agreement, wholly or partially, without judicial intervention through means of a non-judicial declaration and/or withdraw and/or annul an offer if Customer is a person and becomes deceased, if Customer submits a legal request for debt restructuring, if bankruptcy or suspension of payment has been filed for Customer, if Customer is in a state of bankruptcy or suspension of payment has been granted or if Customer's company is liquidated or ended for any reason other than reconstruction or company merger. In these cases, any claim by Delta-N will be immediately due.
- 1.5.5** After the agreement has been ended, for any reason, Customer can no longer obtain any of the rights provided by the agreement, leaving unhindered the existence of the obligations of both parties which by their nature continue automatically after the conclusion of their agreement, such as but not limited to, obligations concerning property rights, confidentiality and non-competition.
- 1.6 Co-operation/Information Requirements For Customer**
- 1.6.1** All assignments are carried out by Delta-N on the basis of data, information, requests and/or requirements made known to Delta-N by Customer.
- 1.6.2** Customer shall provide all necessary cooperation to Delta-N and shall make timely known all useful and necessary data and/or other information required for an adequate execution of the agreement. Customer shall ensure the accuracy of this data and/or other information.
- 1.6.3** If data, information and/or requirements necessary for execution of the agreement, are not provided, not timely provided and/or not provided in accordance with the agreement, or if Customer fails to meet its obligations in any other way; then Delta-N has in any case the right to terminate or dissolve ("ontbinden") the agreement or to suspend execution of the agreement and Delta-N has the right to charge the costs incurred at its usual rates.
- 1.6.4** If changes and/or new facts arise in regard to data, information, requests and/or requirements previously provided, Delta-N will always be fully allowed, in consultation with Customer, to adjust the agreement to these new circumstances or to dissolve or annul the agreement.
- 1.6.5** If Customer makes functional improvements or any other adjustments in the Products and Services (after first having received the written permission from Delta-N, as further described in clause 2.1.4), Customer is obliged to report such adjustments to Delta-N, in the event that Delta-N provides Maintenance, Support, or any other services with regard to Products and Services provided to Customer.
- 1.6.6** In the event Delta-N performs activities in a location other than its own, Customer will be responsible for providing free of charge reasonably requested facilities, such as office space and telecommunication facilities. Customer is furthermore obliged to have available telecommunication facilities, as well as a workspace that complies with the requirements of the Dutch Arboret.
- 1.7 Confidentiality/Non-competition**
- 1.7.1** Delta-N and Customer mutually commit themselves to the confidentiality of all data and information concerning each other's organization, clients, files and Products and Services, of which they become aware while working for each other or for Customer's clients. Data and information may only be used in order to carry out the agreement between parties.
- 1.7.2** Delta-N is authorized to place the name and logo of Customer or Customer's clients who are given rights to the Products and Services on the Delta-N website and/or reference list and to make them available to third parties for information.
- 1.7.3** Customer and its clients will not enter into any direct or indirect commercial, employment, or other such relations with employees of Delta-N or employees seconded by Delta-N during the agreement and for a period of 12 (twelve) months after termination or dissolution of the agreement, without the written consent of Delta-N. Customer will ensure that its clients will comply with the foregoing obligation.
- 1.7.4** In the event that Customer breaches clause 1.7.3, Customer will be charged, without further notification required, a fine of € 50,000 (fifty thousand euros) for each breach, undiminished the right of Delta-N to claim full



compensation for damages incurred.

## **1.8 Liability**

- 1.8.1** Delta-N's total liability shall be limited, in accordance with clauses **Error! Reference source not found.** and 1.8.3, to compensation for direct damage and to a maximum of the amount received by Delta-N of the price stipulated in the agreement (excluding VAT) to a maximum of € 250.000,- (two hundred and fifty thousand euros), whereby a sequence of events is regarded as one event.
- 1.8.2** If the agreement also includes an agreement over time with a term of more than 1 (one) year and Delta-N's liability flows forth from the agreement over time, the stipulated price will be calculated on the basis of the total amount (excluding VAT) as actually paid by Customer to Delta-N on the basis of the agreement over time for 1 (one) year (this being the year in which the damage occurred) to a maximum of € 250.000,- (two hundred and fifty thousand euros).
- 1.8.3** The total liability of both parties for a failure in the performance of a warranty obligation and/or an offered indemnification constitutes an exception to clauses 1.8.1 and 1.8.2: this is limited to twice the total amount of the compensations (excluding VAT) received by Delta-N from van Customer for 2 (two) years, with a maximum of € 350.000,-, (three hundred fifty thousand euros), whereby a sequence of events is regarded as one event.
- 1.8.4** Delta-N's total liability for damage resulting from death or physical injury will in no event amount to more than € 1,000,000 (one million euros), whereby a sequence of events is regarded as one event.
- 1.8.5** Direct damage is exclusively understood as:  
a) The reasonable costs made in determining the cause and extent of the damage;  
b) The reasonable costs incurred in prevention or limitation of the damage, to the degree that Customer can demonstrate that these costs have led to the limitation of the damage.
- 1.8.6** Delta-N's liability for indirect damage, including consequential damage, loss of profit, loss of savings, mutilated and/or lost data, delays, losses, damage as a result of a failure of Customer to provide the required information or assistance, damage through corporate inactivity and/or claims from third parties against Customer, is expressly rejected.
- 1.8.7** With the exception of the cases named in this clause 1.8, Delta-N has no liability for damage compensation regardless of what an action towards compensation could be based upon.
- 1.8.8** Delta-N's liability exists solely when Customer immediately and appropriately notifies Delta-N of the deficiency in writing, proposing therein a reasonable time period for correction of the deficiency and Delta-N then culpably fails to meet the aforesaid obligations. The notification of deficiency ought to be as detailed a description of the deficiency as possible so that Delta-N is able to react adequately.
- 1.8.9** The condition for the existence of any right to compensation is always that Customer notifies Delta-N in writing by registered mail within 60 (sixty) days after the damage came into existence and takes the necessary measures to limit the damage as much as possible.
- 1.8.10** Customer indemnifies Delta-N from all liability regarding third parties due to allegations as a consequence of deficiency in a product, system or service provided by Customer to third parties that consisted of a delivery made by Delta-N.
- 1.8.11** Delta-N does not accept any liability for damage regardless of its nature caused by Third Party Products and Services which Delta-N has delivered to Customer. If possible Delta-N will transfer its rights for damage compensation from the supplier of the Third Party Product in question to Customer.
- 1.8.12** Unless otherwise agreed upon in a service level agreement, Delta-N is not liable for any damage regardless of its nature, which is the result of a failure to provide Support, Maintenance and/or Warranty on time.
- ## **1.9 Transfer ("Overdracht")**
- 1.9.1** The agreement between Delta-N and Customer and the rights and obligations, which flow forth from this agreement, cannot be transferred to a third party by Customer without the prior written consent from Delta-N.
- 1.9.2** Customer gives Delta-N in advance the right, without needing the explicit approval of Customer, to transfer the whole agreement or parts thereof to: i) holding-, sister- and/or subsidiary companies; ii) third party in the case of merger or acquisition of Delta-N. If this occurs, Delta-N will inform Customer.
- ## **1.10 Force Majeure ("niet-toerekenbare tekortkoming")**
- 1.10.1** Neither party is obligated to fulfill any obligation if they are prevented from doing so as a result of circumstances, which can be considered beyond their fault, and for which a party cannot be held accountable for by law, legal act, or generally accepted practices. The aforementioned circumstances include circumstances that are beyond Delta-N's power as well as business risks of Delta-N, these include but are not limited to failure to perform by a supplier of Delta-N, the late or non-availability of required information and specifications and/or changes in such information, incorrect functional specification of Third Party Products and Services and/or products delivered by a third party, bad weather conditions, fire, explosions, electricity failures, (D)Dos-attacks, hacking, cracking or any downtime or unavailability caused by unlawful conduct by third parties, the destruction, damaging or disabling of any automated system or any system for telecommunication by whoever, causing interference in the course or the working of such system, or frustrating by whoever of a security measure taken with respect to such system, interference in networks, floods, illness, lack-of-staff, strike or other employment conflicts, accidents, actions by the government, not being able to obtain required licenses and/or permits, lack of materials, theft, traffic disruptions and/or transportation problems.
- 1.10.2** When force majeure is of a temporary nature, Delta-N has the right to suspend its commitments until the force majeure has ceased to exist without being obliged to any form of damage compensation.
- 1.10.3** Delta-N reserves the right, in the case of force majeure, to collect payment for obligations already fulfilled before force majeure was known.
- 1.10.4** In the event that the force majeure of either party surpasses a three month period, either party has the right to terminate the agreement without being obliged to any form of damage compensation regarding such termination.
- ## **1.11 Nullity ("Nietigheid")**
- 1.11.1** If one or more terms (or part of a term) of the agreement are nullified, declared to be nullified, annihilable or have lost their validity in another way, the other terms (or part of the term in question) of this agreement will remain in force undiminished.
- 1.11.2** With regard to terms (or part of the term) that are nullified, declared to be nullified, annihilable or lose their validity in another way, parties shall consult with each other to try to reach a substitute arrangement with which the parties shall



strive for the maintenance of this agreement (or the remainder of the term in question) in its totality.

#### 1.12 Applicable Law and Dispute Resolution

- 1.12.1 All agreements made between Delta-N and Customer are governed by the laws of The Netherlands, unless otherwise agreed upon in writing. Parties explicitly agree that the United Nations Convention on Contracts for the International Sale of Goods (CISG) is not applicable.
- 1.12.2 Disputes between parties which cannot be resolved amicably, will be solved through arbitration of the Stichting Geschillenoplossing Organisatie en Automatisering (SGOA) (The Dutch arbitration court (foundation) for ICT related matters), in accordance with the SGOA's regulations for arbitration. With the mutual agreement of both parties, parties may try to solve their disagreement through other provisions offered by the SGOA for the settlement of disputes prior to arbitration.
- 1.12.3 If the SGOA declares itself unauthorized or if parties mutually agree to such, disputes will be placed before the qualified court of The Hague, location The Hague.
- 1.12.4 Either party also may, without waiving any remedy under the agreement, seek from the qualified court of The Hague, location The Hague, any interim or provisional relief that is necessary to protect the rights or property of that party, pending the establishment of the SGOA arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the controversy).

## 2. Delta-N PRODUCTS AND SERVICES

### 2.1 Usage Rights Software Programs

- 2.1.1 Customer is granted the non exclusive right to use the Products and Services and corresponding documentation.
- 2.1.2 User rights are limited exclusively to own use of the Products and Services for the agreed upon Central Processing Unit (CPU), number of users, servers and/or workstations. If no limitations have been agreed upon, user rights will be limited to the CPU on which the Products and Services were first installed and the number of users, servers and/or workstations will be limited to 1 (one).
- 2.1.3 User rights for software Products and Services are limited to the Object Code. Rights to the Source Code are not provided, unless explicitly agreed upon otherwise in writing.
- 2.1.4 It is prohibited for Customer directly or indirectly (through a third party) to copy, duplicate or alter the Products and Services in any way, without the prior written approval from Delta-N.
- 2.1.5 Customer is allowed to make one Back-up copy of the Products and Services, if a Back-up is not provided for by Delta-N. Customer may not use this Back-up for operational purposes, without prior consent of Delta-N.
- 2.1.6 User rights on the Products and Services cannot be transferred to any third party (third parties also include holding-, sister- and/or subsidiary companies).
- 2.1.7 Customer does not have the right to make the Products and Services available, under any title or in any way whatsoever, to any third party (third parties also include holding-, sister- and/or subsidiary companies).
- 2.1.8 Reverse engineering or decompilation of the Products and Services is not permitted by Customer, unless such is explicitly permitted by law.
- 2.1.9 The user rights shall go into effect after Customer has made the required payments and fulfilled its other obligations.
- 2.1.10 The extent of the user rights on Third Party Products and Services is determined by the Third Party General Conditions as described in clause 5. Where the foregoing

does not deviate from the Third Party General Conditions, the foregoing will also be applicable.

### 2.2 Verification

- 2.2.1 Delta-N is entitled to incorporate technical limitations and control mechanisms in the Products and Services in order to prevent and/or verify that the actual number of users, servers and/or workstations does not surpass the agreed upon number of users, servers and/or workstations.
- 2.2.2 Delta-N is entitled itself or through the use of a third party, as long as Customer makes use of the Products and Services, to make unannounced verification visits to the locations where the Products and Services are used. Customer shall provide all necessary cooperation and access. In the event Customer refuses cooperation and/or access, Delta-N will be entitled to terminate the agreement immediately. In this event Customer will no longer be entitled to use the Products and Services and will be obligated to return all Products and Services and destroy any copies made thereof within 30 (thirty) days after the first request of Delta-N.
- 2.2.3 If, on the basis of the above described verification procedure or otherwise, it appears that the actual number of users, servers and/or workstations surpasses the number of users, servers and/or workstations agreed upon, Customer will be obligated to immediately acquire the missing number of users, servers and/or workstations licenses and pay an additional fine of 25% over the amount due. Amounts indebted for Maintenance and Support for the missing users, servers and/or workstations will be charged from the moment of delivery of the previously agreed upon number of users, servers and/or workstations. In addition Delta-N reserves the right to report to the Software Alliance (BSA).

### 2.3 Maintenance

- 2.3.1 Delta-N offers Customer, depending on the Delta-N Products and Services delivered, the option of acquiring Maintenance.
- 2.3.2 Maintenance on the Delta-N Products and Services is based on a periodic Advance and further to be specified terms and conditions. Where these further to be specified terms and conditions do not deviate herefrom, clause **Error! Reference source not found.** will be applicable.
- 2.3.3 Maintenance includes providing updates and documentation of the licensed Delta-N Products and Services delivered to Customer, which either contain a qualitative (e.g. Error fix) or a functional improvement of the Delta-N Product that has been made available. Delta-N is not obliged to actively keep Customer up to date concerning possible updates of the Delta-N Products and Services.
- 2.3.4 If Maintenance results in a functional improvement, Delta-N will have the right to charge extra payment to compensate for this functional improvement.
- 2.3.5 Delta-N is authorized to refuse the provision of Maintenance if the Delta-N Products and Services provided by Delta-N or the environment in which the Delta-N Products and Services operate are altered by Customer in any way or form.
- 2.3.6 If Customer refuses to install updates that are offered by Delta-N to Customer, then Delta-N reserves the right to terminate the agreement or to adjust the agreement in accordance with the refusal to install updates.

### 2.4 Advice

- 2.4.1 All Products and Services that can be considered advice or which can be described as advice, such as but not limited to Support (clause 2.5), consultancy and project



management, and Feasibility Study (clause **Error! Reference source not found.**), etc., will only be given to the best of Delta-N's knowledge and capability.

**2.4.2** Delta-N is not responsible and/or liable if the activities that follow forth from advice result in Customer's failure to carry out a project within allocated budgets, time schedules and other agreed upon conditions.

**2.4.3** Delta-N will provide advice on the basis of the conditions required by Delta-N and information received from Customer as mentioned in clause 1.6. If it appears that not all relevant information has been received and/or other problems and/or insights may arise, such as but not limited to incompatibility problems (products are unable to interoperate with each other), the given advice may be adjusted to the new circumstances.

## **2.5 Support**

**2.5.1** If agreed upon, Delta-N provide Support with respect to certain Products and Services. Support consists of providing verbal (telephonic) and written (e mail) advice concerning the use and operation of Delta-N Products and Services. Support is initially based on a periodic Advance. Delta-N will only provide Support on the most current updates of the Delta-N Products and Services.

**2.5.2** If Customer uses software that is no longer supported by Delta-N, Delta-N is allowed to terminate or suspend any support agreement with respect to that software, until the most recent version of that software is in operation with Customer.

## **2.6 Security**

**2.6.1** Only when Delta-N performs system- and network administration, shall Delta-N provide security measures against unauthorized acces by third parties to the systems and/or networks administrated by Delta-N.

**2.6.2** Security will be given at the discretion of Delta-N and to the best of Delta-N's knowledge and capability.

**2.6.3** Delta-N shall periodically provide preventive measures against unauthorized acces by third parties. Delta-N is no case liable if the security measures are breached. In case of such breach, Delta-N shall as soon as possible take measures to block the unauthorized acces.

## **2.7 Custom Work**

**2.7.1** All assignments consisting wholly or partially of custom work are billed on the basis of Fixed Price or Subsequent Calculation.

**2.7.2** Parties shall specify in writing the manner of development and the Delta-N Product to be developed. Delta-N will carry out the Delta-N Product development activities with due care on the basis of information provided by Customer, for which information Customer ensures the accuracy, completeness and consistency.

**2.7.3** Delta-N is authorized, but not obliged, to investigate the correctness, completeness and/or consistency of the data or specifications provided to Delta-N and, if it is determined that there is any inaccuracy, incompleteness or inconsistency, to suspend activities until such time as Customer has remedied the deficiencies.

**2.7.4** A deviation of 10% in the prices mentioned will be deemed to be accepted by Customer and will not require further notification to and/or approval by Customer.

**2.7.5** Intellectual property rights, industrial property rights, and other rights to custom work remain at all times with Delta-N, as described in clause 8.1.

## **2.8 Additional Work**

**2.8.1** If, in the opinion of Delta-N, a change request by Customer is in fact a request for additional work, Delta-N will notify

Customer thereof prior to performing additional work. Upon Customer's request, the notification will be followed by a specification of the price and additional conditions. Customer will decide as soon as possible whether to carry out the additional work.

**2.8.2** It will be assumed that Customer has agreed to the performance of additional work and the connected costs, if Customer has allowed additional work to take place without raising objections in writing prior to the commencement of additional work.

## **2.9 Installation and Implementation**

**2.9.1** Delta-N will only install and/or implement the Products and Services or have them installed and/or implemented if agreed upon in writing.

**2.9.2** Prior to installation and/or implementation Customer will see to it, at its own expense, that all conditions required by Delta-N have been met in order to ensure a successful installation and/or implementation.

**2.9.3** Customer will ensure and is entirely responsible for fulfilling the necessary Third Party General Conditions in order to let installation and/or implementation take place legally.

**2.9.4** If implementation and/or installation has not been performed within the agreed upon time schedule due to Customer's fault, Customer will make payments as if implementation and/or installation has been performed, undiminished the obligations of Delta-N to proceed with installation and/or implementation at a later time period.

## **2.10 Back-ups**

**2.10.1** As far as is possible, Customer will be responsible for making Back-ups on time. Upon Customer's request, Delta-N will inform Customer of the procedures and security measures necessary regarding securing data and the realization of Back-ups.

**2.10.2** If it is not possible for Customer to make Back-ups (and it is possible for Delta-N to make Back-ups) or if it is agreed upon that Delta-N will provide partially or entirely for the provision of Back-ups, Delta-N will make the Back-ups. Under no circumstance shall Delta-N be liable for these Back-ups for so far as but not limited to the complete or partial loss of these Back-ups and/or errors in the Back-ups.

## **2.11 Activities**

**2.11.1** Any activities, Maintenance, Support and other services will take place without interruption on Business Days and under normal working conditions.

**2.11.2** For every continuous period within which Delta-N performs activities for less than 3 (three) hours at a location other than Delta-N's place of business, Delta-N will be entitled to charge Customer for a minimum of 3 (three) hours. A continuous period exists if the period in which no activities are performed, in between the one period and the next period in which activities are performed, does not exceed more than 1 (one) hour.

**2.11.3** Activities that are performed outside of Business Days are considered as overtime. The applicable rate will be increased with 50% for overtime after or before Business Days. The applicable rate will be increased with 100% for overtime on weekends and public holidays.

**2.11.4** If parties agree that activities will take place in phases, Delta-N will be entitled to postpone activities for the following phase until Customer has accepted in writing activities performed in the previous phase.

**2.11.5** Delta-N will only be obligated to follow timely and reasonable instructions given by Customer when performing activities if agreed upon explicitly in writing. Delta-N is not obligated to follow instructions that will alter



the content or scope of the agreed upon activities. In the event such instructions are followed, the activities performed will be charged on the basis of Subsequent Calculation.

- 2.11.6** Delta-N is entitled, without the explicit consent of Customer, to make use of third parties when performing activities.

### **3. IaaS, PaaS, SaaS**

#### **3.1 Delivery of the Infrastructure**

**3.1.1** As soon as possible after the contract has formed, Delta-N will deliver the ordered environment within the Delta-N Infrastructure and/or Third Party Infrastructure.

**3.1.2** Customer shall provide all documents, data, information and information carriers necessary for delivery and all other materials necessary for the performance, to Delta-N, fully, soundly and timely.

#### **3.2 General**

**3.2.1** Delta-N will provide a IaaS, PaaS and SaaS platform via a IaaS, PaaS and SaaS provider chosen by Delta-N. These are Third Party Products and Services. The provision and use of IaaS, PaaS and SaaS is subject to Third Party General Conditions, Service Level Agreements and License agreements.

**3.2.2** If the environment in which IaaS, PaaS, SaaS is provided is administrated by Customer, Customer is responsible for the consequences of adjustments, expansions and/or adaptations in the provided IaaS, PaaS, SaaS. If the IaaS, PaaS, SaaS-environment is administrated by Delta-N, Customer is at all times obliged to request permission from Delta-N for making adjustments, expansions and other changes. Delta-N is not obligated to offer support on IaaS, PaaS, SaaS if Customer has not requested this permission.

**3.2.3** With regard to the access and use of the IaaS, PaaS, SaaS Customer has equipment and software directly or indirectly available which comply with the standards and/or requirements set by Delta-N of which Customer has been notified directly or indirectly. Customer is required to maintain compliance with the conditions set out in this clause. If equipment and/or software do not comply with this clause, the obligations of Delta-N to provide access to the IaaS, PaaS, SaaS and the use of such may be suspended by Delta-N.

**3.2.4** Customer will enable Delta-N to verify if the standards and/or requirements as set out in clause 3.2.3 are met.

**3.2.5** If Customer, after the verification as set out in clause 3.2.4, still fails to meet the standards and/or requirements as set out in clause 3.2.3, Delta-N will have the right to terminate or dissolve the agreement wholly or partially without prior notification and/or judicial intervention.

**3.2.6** Customer is required to follow instructions given by Delta-N regarding the IaaS, PaaS, SaaS.

**3.2.7** Delta-N is entitled to view log files and the like for purposes of analyzing the use of the IaaS, PaaS, SaaS. The results of such an analysis will not be made available to third parties (third parties do not include holding or subsidiary organizations of Delta-N). This does not apply to figures and data with regard to the use of the IaaS, PaaS, SaaS, which are not directly traceable to Customer's use.

**3.2.8** In the event Customer signals a malfunction, Customer must immediately report such to Delta-N. After Customer has notified Delta-N of the malfunction, Delta-N will take the necessary steps, which will or could lead to a solution.

**3.2.9** The costs for resolving the malfunction are for the account of Customer if it appears that the malfunction is the result of Customer's act or failure to act in accordance with the

agreement.

- 3.2.10** Delta-N may, if deemed necessary by Delta-N, inform Customer prior to the commencement of intended Maintenance with regard to IaaS, PaaS, SaaS.

#### **3.3 Browser**

**3.3.1** Customer can access the Hosting Services through a browser or Remote Desktop Protocol Client. Delta-N will announce the version of the Client software for which the Hosting Services have been optimized at the moment of entering into the agreement.

**3.3.2** Delta-N is not obligated to maintain optimal access to the Hosting Services through the announced browsers announced. Delta-N is entitled, without any form of (damage)compensation being required, to make changes in the Hosting Services which may influence the browser or Remote Desktop Protocol Client used by Customer and/or advised by Delta-N.

**3.3.3** In the event that the situation as described in clause **Error! Reference source not found.** takes place, Delta-N will use all reasonable endeavors to enable Customer to transition to a different browser or Remote Desktop Protocol Client. The costs incurred by Customer in doing so are for the account of Customer.

#### **3.4 Use of Identification Codes**

**3.4.1** Delta-N will make Identification Codes solely available to Customer for the use of Products and Services. Customer will use these Identification Codes with care. Customer will notify Delta-N in the event of loss, theft and/or other forms of unauthorized use, in order to enable parties to take the proper actions.

**3.4.2** Customer carries all responsibility, liability and costs related to the use of Identification Codes used and/or distributed by Customer. In no event will Delta-N be liable for the misuse and/or unauthorized use of Identification Codes.

**3.4.3** If there is a reasonable suspicion of misuse or unauthorized use of Identification Codes, Delta-N can provide Customer with instructions, which must be carried out.

#### **3.5 Changes in the IaaS, PaaS, SaaS**

**3.5.1** Delta-N is entitled, after a written announcement taking into consideration a reasonable notification period and without any compensation to Customer, to make adjustments to and/or changes in the IaaS, PaaS, SaaS, such as but not limited to:

- a) entrance procedures, such as:
  - procedures regarding operational rules and;
  - security procedures.
- b) changes in a third party provider/supplier, location, hardware, software and other facilities necessary for the provision of the IaaS, PaaS, SaaS.

**3.5.2** If any changes made have a significant negative impact on Customer's business or the functionality of the IaaS, PaaS, SaaS, Customer may, after providing relevant proof of the deterioration in writing, request in writing that Delta-N provide an alternative. If Delta-N then fails to provide an alternative, Customer will have the right to terminate the use of the IaaS, PaaS, SaaS, without any damage compensation required by Delta-N and/or third party or restitution of amounts paid.

#### **3.6 Requirements Customer IaaS, PaaS, SaaS**

**3.6.1** If, through use of the IaaS, PaaS, SaaS, personal data and/or other information/data are transported or commercial activities and/or other activities are undertaken, Customer





will indemnify Delta-N from all liability, costs or damage as a result of claims from a third party in the event personal data and/or other information/data are transported or commercial activities and/or other activities are undertaken in violation of the relevant (privacy) laws and/or guidelines.

**3.6.2** Customer will immediately inform Delta-N in writing regarding changes that are relevant for the proper execution of the IaaS, PaaS, SaaS.

**3.6.3** Customer will follow the instructions given by Delta-N regarding Fair Use. If Customer fails to follow the instructions given by Delta-N, Delta-N will be entitled through technical means to reduce the overload or in the case of a continuous overload to stop the provision of the IaaS, PaaS, SaaS to Customer. Delta-N will never be liable for damages of whatever nature that are incurred by Customer and/or third parties as a result of the measures undertaken by Delta-N or by a third party on behalf of Delta-N.

### **3.7 Personal Data**

**3.7.1** Customer is the 'controller' in terms of the Dutch Personal Data Protection Act (Wet bescherming persoonsgegevens) and is thus responsible for the protection of (personal) data, that is sent or adapted and/or processed by the equipment and/or software of Delta-N on behalf of Customer.

**3.7.2** Customer will indemnify Delta-N against any allegation as a result of a violation of any person's privacy.

**3.7.3** Where Customer is authorized, Customer explicitly agrees with the registration of (privacy) information of users in the privacy registration of Delta-N for administrative and management purposes. The privacy registration will contain, amongst others, Identification Codes and Process-data and will only be accessible for Delta-N. This information will not be provided to third parties unless Delta-N is obligated to do so on the basis of a court order.

**3.7.4** Contrary to clause 3.7.1 Delta-N will be responsible as 'processor' in terms of the Dutch Personal Data Protection Act (Wet Bescherming persoonsgegevens) for the protection of personal data of which the use by Delta-N is necessary for the proper fulfilment of its obligations under the agreement and Delta-N will indemnify Customer against allegations of private individuals for violation of their privacy as a result of an act or failure to act of Delta-N. Delta-N as 'processor' shall comply with all relevant obligations under the Personal Data Protection Act.

### **3.8 Code of Conduct**

**3.8.1** Delta-N reserves the right, at Delta-N's sole discretion, if forced by law or a court order; and/or a third party informs Delta-N and/or a suspicion exists that through the IaaS, PaaS, SaaS a violation is made of the rights of a third party; there is a breach of the General Conditions Delta-N and/or the agreement and the resulting obligations in question have not been met wholly or partially, to bar access to the IaaS, PaaS, SaaS and/or other facilities offered, to remove the information in question and/or suspend its other obligations until Customer meets its obligations.

**3.8.2** Delta-N will never be liable for damage of whatever nature suffered by Customer or third parties for measures taken by and/or on behalf of Delta-N on the basis of clause 3.8.1. Payment obligations will remain in effect during the time period in which measures are undertaken by and/or on behalf of Delta-N on the basis of clause 3.8.1.

**3.8.3** If the actions and/or failure to act of Customer justifies this and/or the actions and/or failure to act of Customer continues regardless of the measures under taken by Delta-

N, as set out in clause 3.8.13.8.1, Delta-N will be entitled in accordance with clause 1.5.3 to terminate the agreement, without any damage compensation or restitution of monies paid being required.

## **4. COURSES**

### **4.1 Application**

**4.1.1** Participation in Courses must be applied for at least 2 (two) weeks prior to commencement of the Course. If the requested Course is fully booked, Customer shall be notified.

**4.1.2** Immediately after receipt of an application Delta-N will send a confirmation of receipt regarding the applied for Course. For applications which have been made verbally, the confirmation will be considered to reflect the application correctly and completely, unless objections are made in writing within 3 (three) Business Days.

**4.1.3** Courses are given against the then applicable rate. Delta-N has the right to charge costs made such as rent for office space, Course materials, etc.

### **4.2 Cancellations**

**4.2.1** Delta-N reserves the right to cancel a Course if the required number of applications is not met. If such cancellation takes place Customer will initially be notified at least 1 (one) week prior to commencement of the Course. Any Course fees paid will be reimbursed. Customer may also decide to participate in the Course against a higher fee. This will be arranged in consultation.

**4.2.2** Cancellations made by Customer 4 (four) weeks prior to commencement of the Course are free of charge; if cancellation is made any later, 50% of the indebted Course fee will be charged. Delta-N will be entitled to charge 100% of the indebted amount for cancellations made either within 1 (one) week before the Course, or after commencement of the Course.

### **4.3 Execution**

**4.3.1** Delta-N will strive with best efforts to provide the Course in accordance with the published schedule but will not be liable if the Course must be canceled or interrupted due to special circumstances. In such an event Delta-N will strive within reason to provide the Course or the remainder of the Course at a later time period. If this is not possible, previously paid Course fees will be reimbursed proportionally.

### **4.4 Private Courses**

**4.4.1** Private Courses are Courses provided exclusively for Customer in which only Customer participates. Private Courses can be provided at either the location of Customer or Delta-N.

**4.4.2** Fees for private Courses depend on the number of participants. If the number of participants is more or less than the number of participants indicated in the offer, Delta-N has the right to increase or reduce the applicable fee.

**4.4.3** In the event Courses are provided at Customer's location Customer must provide the necessary facilities and offices space in accordance with clause 1.6.6.

### **4.5 Refusal Participants**

**4.5.1** Delta-N reserves the right to refuse participants to a Course:

- if payments due have not been fully paid yet and/or on time before commencement of the Course;
- due to competitive reasons or other reasonable



grounds for Delta-N.

## 5. THIRD PARTY PRODUCTS AND SERVICES

### 5.1 Third Party Products and Services

**5.1.1** Delta-N has the right to deliver Third Party Products and Services or make use of Third Party Products and Services in fulfilling its obligations flowing forth from the agreement. Delta-N is not responsible for Third Party Products and Services, unless agreed upon otherwise in writing.

**5.1.2** If Delta-N delivers Third Party Products and Services to Customer, the Third Party General Conditions will be applicable to the agreement in addition to these General Conditions Delta-N.

**5.1.3** Delta-N will deliver rights for Third Party Products and Services under the same conditions as indicated in the Third Party General Conditions.

**5.1.4** No Maintenance, Support or other services will be carried out by Delta-N on Third Party Products and Services, unless agreed upon otherwise in writing.

**5.1.5** With regard to Third Party Products and Services delivered, Delta-N will provide:

- a) service under, at most, the same conditions as provided for in the Third Party General Conditions;
- b) the warranty under the same terms and conditions as indicated in the Third Party General Conditions.

**5.1.6** Repair on Third Party Products and Services:

- a) Under no circumstances will Third Party Products and Services be replaced unless Customer makes an explicit request and pays all connected costs as an Advance.
- b) Operational costs will be applicable on all repairs. In the event that repairs take place outside of Delta-N's office, compensation for travel and waiting time and other related costs will be charged.

### 5.2 Third Party General Conditions

**5.2.1** Third Party General Conditions that are declared applicable in these General Conditions Delta-N shall, when available to Delta-N, be provided on request. Third Party General Conditions will be delivered in the same format and language as received by Delta-N.

**5.2.2** As soon as Customer receives Third Party Products and Services, Customer will declare to have taken notice of the applicable conditions with respect to Third Party Products and Services.

## 6. Delivery

### 6.1 Feasibility Study

**6.1.1** A Feasibility Study is an investigation which can be carried out by Delta-N prior to delivery. The objective of the Feasibility Study is to inform Customer at an early stage as to the feasibility of the assignment.

**6.1.2** Based on the findings of the Feasibility Study, Delta-N will provide a positive or negative delivery advice regarding the feasibility of the assignment. A positive delivery advice usually implies that Delta-N will then carry on with the delivery. A negative delivery advice implies that Delta-N will decline the delivery with cause and will provide an

alternative where possible.

**6.1.3** The costs of the Feasibility Study will always be borne by Customer regardless of the results of the Feasibility Study.

### 6.2 (Delivery) Dates

**6.2.1** All (delivery) dates which may be named by and may be applicable to Delta-N are determined to the best of Delta-N's knowledge on the basis of information made known to Delta-N and will be taken into consideration as much as possible.

**6.2.2** (Delivery) dates shall therefore not be considered to be absolute (delivery) dates within which must be delivered, but a time period within which Delta-N shall strive with best efforts to deliver the agreed upon items. If it is not possible to keep to the (delivery) date, then Delta-N and Customer will consult with each other to agree on a substitute (delivery) date.

**6.2.3** Exceeding a given (delivery) date which may be applicable never constitutes an attributable shortcoming by Delta-N. Delta-N does not accept liability under any circumstances in cases where the (delivery) date may be exceeded.

### 6.3 Reservations

**6.3.1** Delta-N shall commence execution of the agreement between Delta-N and Customer only after a signed copy of the agreement drawn up by Delta-N has been received by Delta-N and/or having received timely payment of all amounts due in full. Should Delta-N commence execution of the agreement prior to receiving a signed copy of the agreement and/or having received timely payment of all amounts due in full, Delta-N reserves the right to suspend execution of the agreement pending receipt of a signed copy of the agreement and/or full payment of all amounts due.

**6.3.2** Customer's rights, such as but not limited to the transfer of Products and Services, are provided under the suspended condition that Customer timely pays the agreed compensations in full. In case of failure to pay, Customer must return the Products and Services to Delta-N at Customer's expense within one week of receiving the instruction from Delta-N to do so. All other remedies in law remain applicable.

**6.3.3** If Customer creates a new product, on the basis of the Products and Services delivered by Delta-N, this will be done on behalf of Delta-N and Customer will keep the new product for Delta-N until all amounts due on the basis of the agreement have been paid on time and in full. Delta-N will maintain all the rights as owner of the new product until the moment payments have been made on time and in full.

### 6.4 Risk

**6.4.1** From the moment of delivery Customer will bear the risk of the Product delivered even if possible ownership and user rights have not yet been transferred. Customer will therefore be held accountable for full payment of the Product delivered regardless of the destruction of or the decline in value of the Product delivered due to circumstances for which Delta-N cannot be held accountable.

**6.4.2** The aforementioned will also be applicable from the moment in which Customer does not make it possible for Delta-N to make a delivery.

### 6.5 Delivery, Installation and Acceptance Procedure

**6.5.1** Delta-N shall deliver the Products and Services to Customer in accordance with the specifications established in writing by Delta-N and, if desired by Customer, install them.

**6.5.2** The delivery of services by or through Delta-N takes place



- at the place and time that the services are performed.
- 6.5.3** Only if installation is carried out by Delta-N is an acceptance period immediately following completion of the installation applicable. The acceptance period for Customer runs for 5 (five) days following completion of the installation. During the acceptance period, Customer is not permitted to use the Products and Services for production and/or operational purposes. During the acceptance period, Customer is not permitted to make changes of any sort in the system.
- 6.5.4** The Products and Services shall be considered by both parties as accepted:
- upon delivery if there is no acceptance period applicable, or
  - if an acceptance period is applicable, on the first day following the acceptance period, or
  - when Delta-N, before the end of the acceptance period, receives a Test Report (clause 6.6): at the moment that the Errors (clause 6.7) identified in that Test Report have been repaired, notwithstanding the presence of small Errors which according to clause 6.7.4 do not hinder acceptance.
- 6.5.5** If the Products and Services are delivered and tested in phases and/or parts, the non-acceptance of a particular phase and/or part will not delay the acceptance of an earlier phase and/or another part.
- 6.5.6** Contrary to the preceding, the Products and Services shall be considered as accepted if Customer uses the Products and Services in any manner for productive or operational purposes before the moment of acceptance. The Products and Services shall be considered as accepted from the beginning of any such use.
- 6.6 Test Report**
- 6.6.1** If it becomes apparent during the acceptance period that the Products and Services contain Errors, as described in clause **Error! Reference source not found.**, which hinder the progress of the acceptance test, Customer shall immediately inform Delta-N hereof in a written and as detailed as possible Test Report. In which case the still remaining acceptance period will be interrupted until such time as the Product is so modified that the Errors are repaired.
- 6.7 Errors**
- 6.7.1** Error(s) means the failure to fulfill the functional specifications set down in writing by Delta-N and, in cases of developing custom work Delta-N Products and Services, the functional specifications expressly agreed upon in writing. An Error only exists where such can be demonstrated and reproduced. Customer is required to immediately report possible Errors to Delta-N.
- 6.7.2** Every right to repair of Errors lapses if the Products and Services provided by Delta-N are altered in any way or form.
- 6.7.3** The repair of Errors shall take place at the location to be determined by Delta-N. Delta-N is entitled to install temporary solutions, emergency solutions, detours and/or other problem-avoiding measures in the Products and Services.
- 6.7.4** Acceptance of the Products and Services may not be withheld on grounds other than those which are related to specifications which have been expressly agreed upon between the parties nor, furthermore, due to the presence of small Errors which do not reasonably impede putting the Products and Services into productive or operational use.
- 6.8 Replacement Performance**
- 6.8.1** Delta-N is permitted to deliver alternative Products and Services than those Products and Services ordered by Customer if the performance and operation of such alternative Products and Services is essentially no different from the Products and Services ordered.
- 6.8.2** If the agreement is formed with the objective of having activities carried out by a particular individual, Delta-N will be entitled to replace this person with another person with the same qualifications.
- 6.9 Warranty ("Garantie")**
- 6.9.1** Delta-N does not warrant that the Products and Services shall function without interruption or without Errors, are suitable for every intended use of Customer and/or will lead to results desired by Customer.
- 6.9.2** After termination of the Warranty period, Delta-N shall not be bound to repair, modify and/or replace the Products and Services, unless parties have agreed otherwise.
- 6.9.3** The Warranty provided on Third Party Products and Services is limited to the Third Party General Conditions as maintained by the supplier of Third Party Products and Services as described in clause 5.
- 7. PRICES/PAYMENTS**
- 7.1 Prices and Payments**
- 7.1.1** All prices exclude VAT and other levies imposed by the government. The amounts invoiced to Customer will include applicable VAT and other levies possibly imposed by the government.
- 7.1.2** Delta-N will invoice the amount, appropriately itemized, owed by Customer on a monthly basis to Customer and/or other term indicated in the agreement. Customer will pay all amounts indebted within 14 (fourteen) days of the invoice date. These payments will not be subject to compensation nor deduction.
- 7.1.3** Should Customer fail to fulfill any payment obligation, Customer is in breach without any further notification of breach being required. Delta-N reserves the right to charge all incurred costs to Customer, including judicial and extra-judicial expenses, with regard to the collection of debts from Customer. Extra-judicial collection costs amount to 15% of the debt, with a minimum of € 500 (five hundred euros). In any case Customer will be charged interest on a monthly basis, at the legal percentage rate increased with 3%, on all outstanding debts starting from the date of failure to pay.
- 7.1.4** Until full payment has been made, Delta-N has the right to suspend all services and obligations to Customer. Customer's obligation to meet Customer's commitments remains unchanged.
- 7.1.5** If Delta-N is unable to make a delivery in time due to Customer, Delta-N will have the right to charge a 1,5% interest reimbursement on a monthly basis over the indebted amount.
- 7.1.6** Compensation for Maintenance, Support and any other annual or periodic amounts are due as an Advance at the moment of realization of the agreement between the parties and shall be billed to Customer, appropriately itemized, prior to each year or other period that the agreement between parties continues.
- 7.1.7** The indebted amount in clause 7.1.1 may be increased with order costs, postage costs and costs of third parties. An increase can also take place in the event that activities have to take place outside of Delta-N's office. In the event that



activities need to take place outside of Delta-N's office, hourly rates, travel and waiting time compensations, actual travel and/or kilometer compensation, hotel expenses and any other costs connected to such services will be charged. The travel and waiting time compensation amounts to 100% of the current hourly rate. The means of transportation will be determined by Delta-N. The foregoing is also applicable on services provided outside of The Netherlands.

**7.1.8** Above mentioned paragraphs leave all the legal rights of Delta-N unhindered, when Customer fails to meet Customer's commitments.

## **7.2 Price Changes**

**7.2.1** The Prices agreed to between Delta-N and Customer are among other things based on the costs of energy and salaries, social premiums, materials and travel and accommodation costs, etc., as well as the rate of exchange between the currencies as applicable at the time of closing the agreement. Delta-N is authorized, in case of changes to one or more of the cost items (for instance Third Party Products and Services) and/or changes in the rate of exchange, changes to the Consumer Price Indices (Consumentenprijsindices (CPI)) or the CBS index for business services (CBS Prijsindex 6202 Computeradvisering), to adjust prices to these changes. At least every January Delta-N will increase its prices, based on the figures, published by CBS 'CBS Prijsindex 6202 Computeradvisering', on January 1st (if necessary based on the figures of Q3). Changes will be rounded off upwards to a multiple of € 2.50.

**7.2.2** Delta-N will offer Customer the possibility to become acquainted with possible changes in prices. If Customer does not agree with a price change, Customer will only be permitted to terminate the agreement from the date the change in price becomes applicable, if and as long as the total price increase during 1 (one) year exceeds the yearly inflation rate of the current year (or previous year for price increases announced for the next year) as published by the CBS (Dutch Bureau for Statistics) by 5%.

## **7.3 Fixed Price**

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

**7.3.2** Unless Delta-N can appeal to clause 1.6.4 extra hours will not be charged.

## **7.4 Subsequent Calculation**

**7.4.1** When charges are to be based on Subsequent Calculation, this means that prior to Delta-N commencing the agreed upon activities a global estimate can be made of the expected costs. On conclusion of the activities carried out, all costs actually incurred related to the activities will be calculated and charged. Customer is, then, aware that there is a possibility that the previously made estimate could be lower than the costs actually incurred. If no agreements have been made regarding billing, activities will be performed on the basis of Subsequent Calculation.

## **7.5 Advance**

**7.5.1** Delta-N has the right to charge payments in Advance. If full payment of the Advance is not made, Delta-N has the right, undiminished its other rights that may flow forth from the agreement, to suspend all its obligations and all amounts

owed by Customer will be immediately due.

## **8. INTELLECTUAL PROPERTY RIGHTS**

### **8.1 Rights of Customer and Delta-N**

**8.1.1** Delta-N has the exclusive right to further develop the Delta-N Products and Services and place them at the disposal of third parties by means of licenses.

**8.1.2** Except where Third Party Products and Services are concerned, all intellectual property rights, industrial property rights, and other rights resulting from all activities carried out by Delta-N, regardless of where and when carried out and regardless of whether it concerns the delivery of an existing Product or Product to be developed in the future, reside with Delta-N.

**8.1.3** Customer acknowledges that all present and future intellectual property rights, industrial property rights, other rights and the registration and/or application of the foregoing rights and/or similar rights for the whole term thereof and all renewals or extensions thereof, now or at any time in the future worldwide at all times shall be and are hereby assigned or will be transferred to Delta-N.

**8.1.4** Customer is not permitted to remove or alter any designation concerning intellectual property rights, industrial property rights, other rights, trademarks and trade names from the Products and Services, or to have such changes made by third parties.

**8.1.5** The intellectual property rights, industrial property rights or other rights of a Product, or a part thereof, can only be transferred to Customer by means of a written deed, if Delta-N has these rights.

**8.1.6** In the event that Delta-N, Customer or a third party makes functional improvements or other adjustments in the Products and Services the intellectual property rights, industrial property rights and other rights vested in the improved or adjusted Products and Services will remain unchanged with Delta-N or the rightful third party. If the above mentioned rights do not belong to Delta-N or the rightful third party, Customer will cooperate in transferring the above mentioned rights free of charge to Delta-N or the rightful third party.

**8.1.7** All intellectual property rights, industrial property rights or other rights of Course material and/or other documentation will remain with Delta-N. Customer is explicitly not permitted to duplicate and/or transfer such to a third party for permanent or temporary use. Customer will ensure that its employees and/or third parties will comply to the foregoing obligation.

### **8.2 Indemnification**

**8.2.1** Delta-N shall protect Customer from any allegation to the effect that the Delta-N Products and Services violate a copyright valid in The Netherlands. Delta-N shall pay the damages, expenses, and court costs that Customer is ordered to pay by the final court ruling, provided that Customer:

- a) notifies Delta-N immediately, but no later than within 10 (ten) days after Customer becomes aware of the infringement or could have become aware of the infringement, in writing of the existence of the allegation of infringement; and
- b) gives the case completely over to Delta-N, including all negotiations and arrangements that might lead to a



settlement.

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

**8.2.2** Delta-N shall not indemnify Customer against an action in the event that:

- a) such is based on the fact that the Third Party Products and Services provided to Customer violate an intellectual property right, industrial property right or other right valid in the Netherlands or elsewhere;
- b) what has been provided by Customer is part of or is delivered in conjunction with a Product and this combination results in a violation of an intellectual property right, industrial property right, or other right valid in the Netherlands or elsewhere;
- c) Customer has made a change in or to the Product.

**8.2.3** If Delta-N and Customer agree that the intellectual property rights, industrial property rights or any other rights of a Delta-N Product, or a part thereof, will be transferred to Customer, Customer will indemnify Delta-N against any action insofar as such is based on the fact that the Product, or a part thereof, violates an intellectual property right, industrial property right or any other right belonging to a third party.