

**LEVELFOUR**

The NXT level

# GENERAL TERMS AND CONDITIONS



## Levelfour Networks

Version 1.0

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### LEVELFOUR®

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### ADMINISTRATIVE

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levelfour®



## **ART. 1 DEFINITIONS**

The following definitions apply in these terms and conditions:

- 1) Supplier: XRC® Services B.V., also acting under the names: XRC® security, XRC® retail court, XRC® media, registered at the Chamber of Commerce in the Trade Register (hereinafter: Chamber of Commerce) under number: 37133919, and/or
  - a) XRC® Concepts B.V., registered at the Chamber of Commerce under number: 56683367, and/or
  - b) XRC® Online B.V., registered at the Chamber of Commerce under number: 56700385, and/or
  - c) Levelfour Networks B.V., registered at the Chamber of Commerce under number: 64515982 and/or
  - d) NXTcom Netherlands B.V., registered at the Chamber of Commerce under number: 56683707 and/or
  - e) CrossNetworks B.V., registered at the Chamber of Commerce under number 52704173, all having their principal place of business in Nistelrode at Canadabaan 16, 5388 RT, and/or
  - f) ParkNed B.V., also trading under the names ParkNed Houten, ParkNed Roermond and Glasvezel Roermond, registered with the Chamber of Commerce under number: 17260759, having its principal place of business in Waalwijk at Gompensstraat Gompensstraat 23, 54145 RM.
- 2) Customer: the person who practices a profession or business or acting as a private individual with whom Supplier has entered into an agreement for the supply of goods and/or services.
- 3) Agreement or Contract: the agreement on the basis of which Supplier supplies goods and/or services to the customer.
- 4) General Terms and Conditions: these general Terms and Conditions.
- 5) Services: the services and/or supply of goods to the Customer by the Supplier under the Agreement.

## **ART. 2 APPLICABILITY**

- 1) These general Terms and Conditions apply to all offers, activities, proposals and Agreements between the Supplier and the Customer, or their legal successors.
- 2) The applicability of general terms and conditions of the Customer is expressly rejected by the Supplier.
- 3) The present terms and conditions also apply to all agreements with supplier, of which third parties should be involved for the implementation.
- 4) If one or more of the provisions in these terms and conditions are null or should be declared void, the remaining provisions of these terms and conditions remain fully applicable. The Supplier and the

Customer shall then consult each other in order to agree on new provisions to replace the invalid or annulled provisions, taking into account if and for as far as possible the purpose and scope of the original provision.

- 5) Clauses that deviate from the General Terms and Conditions are only valid if and insofar as the Supplier has expressly confirmed these to the Customer in writing.
- 6) In the event that these General Terms and Conditions and the Agreement contain contradictions, the conditions included in the Agreement apply.
- 7) The supplier reserves the unilateral right to make interim changes to these General Terms and Conditions. The amended General Terms and Conditions therefore also apply to the existing Agreement between the Customer and the Supplier. Changes are announced in writing and take effect 4 weeks after the announcement or at a later time as stated in the announcement.
- 8) The original Dutch text of these General Terms and Conditions shall prevail over versions published in any other language.

## **ART. 3 OFFERS AND QUOTATIONS**

- 1) The offers and/or quotations made by the Supplier are without obligation; they are valid for 30 days after issue, unless otherwise indicated. The Supplier is only bound by the offers or quotations if the acceptance thereof is confirmed in writing by the Customer within 30 days, unless indicated otherwise in writing.
- 2) The quotations apply as an Agreement as soon as it is signed or approved by the Customer.
- 3) The prices in the aforementioned offers and quotations are exclusive of VAT and other government levies and are indicated in euros as standard, as well as exclusive costs to be incurred in the context of the Agreement, including shipping and administration costs, unless otherwise indicated.
- 4) The Supplier may request the Customer to pay (a part of) the agreed price in advance before work is carried out.
- 5) Offers or quotations do not automatically apply to future Orders.
- 6) The Supplier is entitled to refuse a Customer without stating any reasons.
- 7) The Supplier is entitled to conduct a creditworthiness inquiry into the Customer or have it performed.

#### **ART. 4 CONCLUSION OF THE AGREEMENT**

- 1) The Agreement is concluded at the moment that the Agreement signed by the Supplier and the Customer is received by the Supplier.
- 2) An Agreement, in application of the General Terms and Conditions, is further established when the Customer applies for an Agreement and this request is confirmed in writing or electronically by the Supplier, or the Supplier commences implementation of the Agreement.
- 3) The Agreement is based on the information at that time provided by the Customer to the Supplier. The Agreement is deemed to represent the order correctly and completely. The Supplier is free to prove that the Agreement has been concluded in another way.
- 4) If the Order has been issued verbally, or if the Agreement has not yet been signed, the Agreement will be deemed to have been concluded under the application of these General Terms and Conditions at the moment that the Supplier at the request of the Customer starts with the execution of the Agreement.

#### **ART. 5 EXECUTION OF THE AGREEMENT**

- 1) If and to the extent that the execution of the Agreement requires this, the Supplier has the right to have certain work done by third parties.
- 2) The obligation of the Supplier has the nature of a best effort obligation, not a result based obligation, unless explicitly stated otherwise in the Agreement.
- 3) The Customer will always provide all that information in time that may be useful and necessary for the execution of the Agreement and guarantees that the information provided is correct and complete. If the Customer does not make the necessary information and (auxiliary) resources available to the Supplier in time or in accordance with agreements, the Supplier has the right to suspend execution. The Customer will cooperate by giving access to the locations where the work must be carried out and/or where the services must be provided.
- 4) If an assignment is granted with view to a person, Articles 7:404 and 7:407 paragraph 2 of the Dutch Civil Code are set aside.
- 5) In regard to its services and Agreement, the Supplier can issue advice on the services/service packages to be purchased and/or impose minimum requirements that the Customer must meet. If the Customer deviates from this advice or the minimum requirements, this will be at the expense and risk of the Customer.

#### **ART. 6 DELIVERY, DEADLINES AND RISK TRANSFER**

- 1) If a period has been agreed for specific work or delivery, this is never a strict deadline. Therefore, if the (execution) period is exceeded, the Customer must give the Supplier written notice of default and demand compliance within a reasonable period.
- 2) After delivery, the Customer has five working days to test the link, connection or pipe (the test period). The day on which the test period ends is considered the delivery date, unless the Customer has notified the Supplier in writing during the test period that the connection does not function in accordance with the Agreement. Minor defects that can be remedied within 30 days do not prevent delivery.
- 3) Delivery is "non-free", unless the parties agree otherwise.
- 4) The Customer is obligated to inspect the goods immediately after receiving the goods or when work is performed. If the Customer finds visible errors, imperfections and/or defects, the Customer must immediately inform the Supplier of this in writing within 5 working days after receipt of the goods. If the aforementioned complaints have not been made known to the Supplier within the aforementioned periods, the goods shall be deemed to have been received in good condition or the work shall be deemed to have been properly performed. In the event of rejection upon delivery, see article 27, paragraph 2 (complaints procedure) for options. For other complaints, see Article 27, paragraph 1 (complaints procedure).
- 5) The risk passes to the Customer the moment the goods are received by the Customer or a third party designated by him.
- 6) If the Customer designates a carrier and the choice of this carrier is not offered by the Supplier, the risk passes to the Customer at the time of receipt of the item by the carrier.

#### **ART. 7 PROCESSING PERSONAL DATA**

- 1) The Supplier processes personal data in accordance with the General Data Protection Regulation (hereinafter: GDPR).
- 2) Supplier uses personal data for the following:
  - a) to maintain contact and relationship with the Customer;
  - b) entering into (assessing and accepting you as the Customer) and executing agreements (to deliver our products and services to you);
  - c) for the exchange of personal data with third parties if necessary for the execution of the agreement with the Customer;
  - d) for performing (targeted) marketing and sales activities, such as providing information about other products and services of the Supplier that

- may be of interest and relevance to the Customer;
- e) to analyze personal data in order to improve the service to the Customer, to improve the product and service range, and to better respond to the situation of the Customer;
  - f) for statistical and scientific purposes and to improve our services and to identify trends;
  - g) to control access to applications/websites and to offer functionalities, including through cookies;
  - h) to be able to answer questions and comments from the Customer and to answer the Customer as good as possible;
  - i) to be able to meet other legal obligations.
- Also read our privacy statement on the website for the use of personal data.
- 3) The Supplier may engage third parties when executing services and business activities. These third parties then process data in the capacity of processor for the Supplier or as (joint) controller.
  - 4) Supplier has taken adequate technical and organizational measures to protect personal data against loss or unlawful use.
  - 5) The Customer or data subject can request access to the data that the Supplier processes about him/her. In addition, the Supplier can correct or remove data on request. After a request, the Supplier will provide an overview of the personal data within four weeks. The application can be submitted in writing with a copy of the identification by sending it to the address of the Supplier or via the e-mail address mentioned on the website of the Supplier with the subject "request with regard to personal data". If there are inaccuracies in the registered personal data, the Supplier would like to receive a request for correction or deletion of the data. The supplier may charge a legal fee for the request for declaration.
  - 6) The supplier will only provide personal data to third parties if there is a (legal) obligation to do so or there is prior explicit permission from the person concerned or if provision is required with regard to the implementation of the Agreement or on the basis of a reasonable, general, justified or vital importance or public order.
  - 7) If the Customer/data subject does not want the Supplier to process personal data for marketing activities. The Customer can request this by e-mail or by post. The Customer can also use the option to unsubscribe at the bottom of each newsletter. Regarding mailing that is necessary for the provision of services, such as login details, consumption, verification of accounts, updates and reporting of maintenance/malfunctions, deregistration is not possible.
  - 8) Our privacy statement contains detailed information about the way in which the Supplier handles

personal data. The privacy statement is on our website.

#### **ART. 8 PRICE**

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- 1) All prices and rates are in Euros and excluding sales tax (VAT) and other levies imposed by the government. The Customer owes the Supplier a fee for products, supplies and services. The various rates, (maintenance) costs and subscriptions can be found in the Agreement or can be requested in writing from the Supplier.
- 2) The costs of third parties can also be charged to the Customer on the invoice of the Supplier.
- 3) The Supplier may increase the price if during the execution of the work it appears that the originally agreed or expected amount of work was insufficiently estimated to such an extent at the conclusion of the Agreement, and this cannot be attributed to the Supplier, that it cannot reasonably be expected that Supplier performs the agreed work at the originally agreed fee.
- 4) The Supplier may increase its rates with due observance of an indexation or other agreed standard agreed between the parties.
- 5) Supplier is entitled to raise prices and rates every year according to the CBS Consumer Price Index. If the CBS Consumer Price Index is negative in any year, the then applicable prices and rates will not be adjusted. This price change is no reason for the Customer to cancel the Agreement.
- 6) The Supplier reserves the right to increase the agreed prices and rates in addition to the annual price indexation once a year, after having informed the Customer at least four weeks in advance. In the event of a price increase based on this article, the Customer has the right to cancel the Agreement free of charge if the price increase relates to a public electronic communication service/communication network, this right applies until the day of the change.
- 7) Price increases/increases based on government measures are implemented from the effective date of that measure (including, for example, VAT increases). This price change is no reason for the Customer to cancel the Agreement.
- 8) With regard to the services provided by the Supplier and the amounts due, the relevant documents and data from the Supplier's records provide complete proof, without prejudice to the Customer's right to provide proof to the contrary.

#### **ART. 9 PAYMENT TERMS**

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- 1) The supplier charges the amounts owed by the Customer as follows:
  - a) one-off amounts are invoiced on the delivery date or in the period after delivery;

- b) Periodically due amounts are invoiced in advance and are due from the date of delivery or actual commissioning of the service;
  - c) Usage costs and amounts based on time and material are invoiced periodically afterwards.
  - d) The Supplier may invoice other work, deliveries or services monthly or periodically.
  - e) Supplier can send an advance invoice for the payment of work, deliveries and/or costs.
- 2) Unless otherwise agreed, the Supplier shall always charge its periodic services in advance for a period of three months (being one quarter)
  - 3) Invoices must be paid by the Customer within 14 days after the invoice date, unless explicitly agreed otherwise.
  - 4) The Supplier may require the Customer to pay its invoices by direct debit.
  - 5) Objections to the amount of invoices or complaints do not suspend the payment obligation. The Customer is only entitled to suspend the disputed part of the claim. If an appeal is made for suspension, the Customer will inform the Supplier in writing within 5 working days of the reasons for this.
  - 6) If the Customer fails to pay within the period, the Customer will automatically be in default by law, without further notice of default. The Customer will then owe interest of 12% per year (the statutory commercial interest if this is higher). The interest will be calculated from the day the Customer is in default until the day of full payment. For the interest calculation, part of the month is considered a full month.
  - 7) If the payment obligation has not been met or has not been fully met after the first payment term has expired, the Supplier will send the Customer a written reminder to pay the outstanding amount within a second term. If the Customer has not or not fully complied with the payment obligation within the second term, the Customer will owe both the judicial and extrajudicial (collection) costs based on the BIK scale, with a minimum of € 150.
  - 8) If payment is not made, the Supplier is entitled to suspend its obligations.
  - 9) If the Agreement has been made with more than one Customer, all Customers are jointly and severally liable for the fulfillment of the obligations indicated in this article (regardless of the name of the invoice).
  - 10) The Customer is not permitted to unilaterally distort any amounts owed by him to the Supplier against amounts that he believes he has against the Supplier for whatever reason.
  - 11) If payment in installments has been agreed upon and the first installment expires upon order, the actual delivery will not have to take place until after the first payment has been received.
  - 12) In the event of liquidation, bankruptcy, seizure or suspension of payment of the Customer, the claims

of the Supplier on the Customer are immediately claimable.

#### **ART. 10 SECURITIES**

- 1) The Supplier has the right to demand security from the Customer in the form of a guarantee, bank guarantee, deposit or other form of security.
- 2) As soon as the need for collateral no longer exists, the Supplier will announce that the collateral or the bank guarantee or another form of collateral can be canceled or the deposit will be reimbursed.
- 3) No interest will be paid on the deposit.

#### **ART. 11 EQUIPMENT, SPACE AND INSTALLATION**

- 1) The Customer is not permitted to change equipment without prior written permission from the Supplier. If the Customer modifies the equipment without permission, it is liable for all damage suffered by the Supplier and third parties.
- 2) During installation it is possible that the work and/or service is temporarily unavailable. When the Customer installs the equipment itself, it must follow the Supplier's instructions. If a technician comes to install the equipment, the Customer must grant all cooperation and access and follow instructions so that the technician can do his work completely.
- 3) The Customer is responsible for the use of the necessary hardware and software, configuration, peripheral equipment and connections if such items are not purchased from the Supplier. Supplier is entitled to set certain requirements. If the electronic communication traffic is hampered by the use of the service by the Customer or by the use of the connected equipment, the Customer will follow the instructions to be given by the Supplier and accept the associated financial consequences. If, in the opinion of the Supplier, this is necessary, the Supplier may, if necessary, immediately (temporarily) completely or partially discontinue the service.
- 4) If the Customer rents movable goods/equipment from the Supplier, the duration of the rental is linked to the duration of the service, unless other written agreements have been made regarding the rental period.
- 5) The location where facilities and equipment are located must meet the following conditions:
  - a) A cable route must be possible from the entry point in the building to this space.
  - b) The space can be closed.
  - c) The ambient temperature is between 5 and 30 degrees Celsius.
  - d) The humidity is between 15% and 80%, at 25 degrees Celsius and there is no condensation.

- e) The room is dust-free (classification of 100,000 or better).
  - f) The space is free from gas and acids.
  - g) There are no fluid lines above the equipment.
  - h) The space is vibration-free.
  - i) The room must offer sufficient protection against harmful influences, such as at the discretion of the Supplier and must meet any other requirements set or to be set by the Supplier.
- 6) The Customer must provide for its own account an electricity supply in the room where the telecommunications, equipment or installations are located, with grounded power supply. The voltage supply is 230 Volt AC  $\pm$  10% and 500 VA within 2 meters of the connection. Failure due to the loss of voltage does not fall within the SLA. The supplier therefore recommends placing the connection on a separate group and/or behind a UPS, provided with clean earth in accordance with NEN1010.

#### **ART. 12 MAINTENANCE AND MALFUNCTIONS**

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- 1) The supplier may have set up a help desk to support the Customer, this is stated in the Agreement. On the Supplier's website are also stated the opening times, telephone numbers and contact options. The Customer must first contact the help desk about questions and/or about maintenance or malfunctions.
- 2) The supplier strives to keep the services available. The supplier cannot guarantee that the services are always available. Disruptions are investigated as quickly as possible and resolved based on best effort.
- 3) The Agreement or service level agreement (hereinafter: SLA) states which service level applies.
- 4) The supplier makes every effort to keep the interruptions of maintenance to a minimum. The Supplier is entitled to temporarily disable the network or to limit its use if this is necessary for maintenance or other adjustments. The supplier is not liable for possible damage as a result of the network being taken out of service for maintenance and similar situations.
- 5) If the telecommunication traffic and/or the services provided by the Supplier are hampered by the use of the service by the Customer, the Customer is bound by the reasonable instructions given by the Supplier for the use of the service and the CPE/Fiber Optic Switch (if applicable) associated facilities.
- 6) The Supplier may charge the Customer the reasonable costs of: handling a report or remedying a malfunction that cannot be attributed to the Supplier and/or falls outside the SLA, or when handling the report or remedy the malfunction is caused by a defect in equipment or facilities not made available by the Supplier.

- 7) In the event of an incident where the solution is outside the Supplier's sphere of influence, recovery may take longer. As the Supplier is dependent on third parties, it is not liable for damage in such situations.

#### **ART. 13 ACCESS**

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- 1) The Customer is obligated to allow facilities to be provided in and on buildings and in and on grounds that form a whole for a Service in those buildings or in neighboring buildings and that these facilities be maintained, changed, moved or removed by or on behalf of the Supplier. Any changes, adjustments, (drill) holes, or otherwise to be made for the Service (s) to be provided, must be tolerated by the Customer, whereby the Supplier is not obligated to perform any repair work or any compensation in this regard.
- 2) For the work referred to in paragraph 1 of this article, as well as for the elimination of malfunctions and the verification of compliance with the conditions with regard to the facilities referred to there, the Customer must grant the persons charged with the work access to the places where the work must be carried out. If desired, these people will identify themselves.
- 3) At the request of the Supplier, the Customer must take all necessary measures at the place where the work referred to in this article under paragraph 1 must be performed so that the Supplier can perform the work properly.

#### **ART. 14 CHANGES**

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- 1) With regard to Agreements regarding electronic communication, the Supplier is entitled to change the subscription and the duration thereof. The change is announced to the Customer by e-mail or letter at least 1 month prior to the change. Only in the event that the change is objectively to the detriment of the Customer, does the Customer have the right to cancel the Agreement within the aforementioned 1 month after publication from the date on which the change takes effect.
- 2) If a measure adopted by or pursuant to a statutory regulation or a legal decision relevant to the sector is necessary to adjust its General Terms and Conditions, the service and/or rates, the Customer cannot derive any rights from this and cannot terminate the Agreement.
- 3) If the Supplier, at the request or with the prior consent of the Customer, has carried out work or other performance that falls outside the content or scope of the agreed work and/or performance, such work or performance will be reimbursed by the Customer in accordance with the agreed rates and failing this, according to the usual rates of the



Supplier, if a fixed price was agreed, the additional costs will be charged.

- 4) If the interim change to the Agreement or order execution is caused by the Customer, the Supplier will make the necessary adjustments if the quality of the service requires this. If such an adjustment leads to additional work, this additional work will be invoiced extra.
- 5) Supplier is entitled to change the technical properties of the electronic communication service or of the electronic communication network in order to (continue to) comply with: (i) rules laid down by or pursuant to the law, and/or (ii) with the requirements of the time and the state of the art, and/or (iii) the Agreement. The Supplier endeavors to implement these changes without this having consequences for the possibilities of use of the Customer and the peripherals used by him.

#### **ART. 15 DURATION AND TERMINATION**

- 1) the duration an Agreement entered into is set for a specific period of time with a minimum duration of 12 months, 24 months, 36 months or 60 months, the Agreement states the minimum duration, if no minimum duration is included in the Agreement, a minimum duration of 24 months is assumed, unless the content, nature or scope of the Agreement dictates otherwise or the parties agree otherwise.
- 2) An Agreement cannot be canceled in the interim by the Customer.
- 3) After the specified time in Agreements as referred to in paragraph 1, the duration of the Agreement is converted into an Agreement for an indefinite period.
- 4) An Agreement (which has been extended) for an indefinite period of time as referred to in paragraph 2 may be terminated by the Customer at the end of a calendar month with due observance of a notice period of 3 months.
- 5) Notwithstanding paragraph 3, the parties may agree in their Agreement automatic extension for the same duration as the original period, such extension may also result from the content, nature or scope of the Agreement. Termination of such agreements must be in writing with a notice period of three months before the end of a period.
- 6) An Agreement that has been entered into for a set period of time (a minimum duration) or an Agreement that normally ends with full execution of the order, cannot be terminated free of charge during the term of that specific time or during the performance of the Agreement. The Supplier is entitled to charge the rates for the remaining period (including remaining subscription fees), as well as other costs that were not yet charged. If the Customer terminates the Agreement for a minimum duration and has received benefits or discounts that

can be valued on money, the Supplier may still charge the Customer the benefits or discount.

- 7) The Supplier is entitled to terminate the Agreement for an indefinite period after proper business consultation and stating the reason in writing with a notice period of 3 months. In the event of default by the Customer, the Supplier is entitled to terminate the Agreement immediately, with due observance of the provisions of Article 10 of the General Terms and Conditions.
- 8) In addition to the provisions of the preceding paragraphs, the Supplier is entitled to terminate the delivery of the Service(s), with due observance of a notice period of at least three months, if technical or (business) economic reasons make this necessary. In that case the Supplier will, if possible, offer a replacement service. If the Customer does not wish to accept the service, or if no replacement service is available, the Agreement will be terminated on the date that the Supplier ceases to provide the service.
- 9) The provisions of the previous paragraph 6 also apply if the Supplier is no longer able to dispose of specific products and/or services that are supplied by third parties, for reasons beyond the control of the Supplier.
- 10) On request, the Supplier offers a quotation for a one-year Agreement.
- 11) If there is a continuing performance Agreement, the continuing performance Agreement can only be terminated on the basis of a serious reason for termination. The cancellation must be in writing and with a cancellation period of 6 months. Depending on the situation, the Customer may be liable for compensation.
- 12) In the event that the Customer is in a state of bankruptcy, requests suspension of payment or ceases operations, the Supplier has the right to terminate the Agreement without observing a notice period, all subject to rights under the Agreement and the law.
- 13) The equipment made available remains the property of the Supplier at all times. Upon termination of the Agreement, the Customer is obligated to return the equipment, or if the Customer refuses, it must give the Supplier the opportunity to collect its property. Extra costs for the collection of property will be charged by the Supplier to the Customer. If the Customer does not return the property of the Supplier in good condition, the Supplier may claim recovery and/or charge its costs to the Customer.

#### **ART. 16 RELOCATION**

- 1) If the Customer relocates to an address within the area where the Supplier provides Services, the Customer must inform the Supplier in writing at least one month in advance. In the event of

relocation, the Customer must dismantle peripherals and other items and take them to the new address.

- 2) The Supplier determines in consultation with the Customer when the relocation of the connection will take place. If a working connection on the agreed date is not delivered at the new address, a new time for moving the connection will be determined in consultation.
- 3) A relocation does not result in the termination or suspension of the Agreement. The Customer remains obligated to continue to pay the periodic and user fees as well as (extra) costs associated with the relocation of the connection. If the connection cannot be moved, the Agreement will not be terminated or suspended either. The Customer remains obligated to continue to pay the periodic and (user) fees as included in Article 8 (price) and Article 15 (duration and termination) of the General Terms and Conditions.
- 4) If the relocation entails additional costs, such as extra costs for the Supplier or its suppliers, these costs will be charged to the Customer.

#### **ART. 17 DISSOLUTION AND SUSPENSION**

- 1) If the Agreement is dissolved, the Supplier's claims against the Customer become immediately claimable. If the Supplier suspends compliance with the obligations, it retains claims under the law and the Agreement.
- 2) The supplier always retains the right to indemnification.
- 3) In addition to the legal grounds for termination, the Supplier is entitled to suspend compliance with the obligations and/or to terminate the Agreement if:
  - a) the Customer does not or not fully comply with the obligations under the Agreement;
  - b) Circumstances that have come to the knowledge of the Supplier after concluding the Agreement give good reason to fear that the Customer will not fulfill its obligations. If there is good reason to fear that the Customer will only partially or not properly comply, the suspension is only permitted to the extent that the shortcoming justifies it;
  - c) At the conclusion of the Agreement, the Customer has been requested to provide security for the fulfillment of his obligations under the Agreement and this security is not provided or is insufficient.
- 4). In addition to legal grounds for suspension, the Supplier has the right to suspend its obligations if it is required to do so by a government agency or regulator, if it is necessary for compliance or enforcement of the law, if a court order or judgment is executed, if the security of persons or goods threatens or is damaged, to protect the

integrity of the network, there are good reasons to believe that the use of Services will result in unlawful acts towards third parties. The Customer remains liable for payment during suspension. Supplier may charge costs in the event of reconnection.

#### **ART. 18 NUMBER ALLOCATION AND RETENTION**

- 1) If the Supplier assigns a number on the basis of the Agreement, this article applies.
- 2) For the use of a fixed telephone connection, the Supplier provides the Customer with one or more telephone numbers, unless a telephone number that is already in use by the Customer or a number assigned to him cannot be accepted. If the Customer's telephone number is being used by another provider, the telephone number can be retained if the agreement with that provider is terminated and that provider cooperates in number portability.
- 3) The Supplier is entitled to change a telephone number in the event of changes in the national numbering plan or number allocation, as well as changes in the electronic communication service or network or in other circumstances that require number changes.
- 4) The Customer may request the Supplier, upon termination of the Agreement, to take a telephone number used for the connection that is susceptible to transfer/number portability to a connection with another provider with which the Supplier has made arrangements for number portability (for example, if the Supplier only hosts the telephone number for the Customer). Numbers that are owned or registered in the name of the Supplier cannot be copied. Upon termination of the Agreement, Such numbers will not be used by the Supplier for a period of time to "cool off" the numbers.

#### **ART. 19 MOBILE AND FIXED TELECOMMUNICATIONS**

- 1) If the Supplier provides a mobile telecommunications service on the basis of the Agreement, it may provide a SIM card with associated telephone number and security and access codes per agreed end user, unless agreed otherwise in writing. The Supplier is at all times entitled to have this SIM card replaced or have it replaced. The Customer is forbidden to store SIM cards for a long time and/or to resell and/or misuse them.
- 2) If the Supplier provides a fixed telecommunication service on the basis of the Agreement, the Supplier will provide the (rental) lines, equipment and services in accordance with the specifications agreed in writing between the parties. If the Supplier is not authorized to provide the (rental) lines in-house, the



Customer must provide this at its own expense and risk.

- 3) The Customer is obligated to carefully keep the SIM card and the security and access codes provided and chosen by himself and to ensure that the SIM card and codes do not fall into the hands of an unauthorized person. If possible, the Supplier will block a SIM card in the event of loss or misuse. The Customer owes all costs incurred in connection with the use of the SIM card.
- 4) The Customer can only request a new application or extension by the authorized representative/representative registered at the Chamber of Commerce. A copy of proof of identity and extract from the Chamber of Commerce not older than 3 months must be supplied.
- 5) Equipment that is placed with the Customer for a line or service remains the property of the Supplier, unless the parties have agreed otherwise in writing. If the Customer connects its own equipment with the connections supplied by the Supplier, the Customer will ensure that this equipment meets the requirements set by or pursuant to the law.
- 6) The Customer is never entitled to unblock or have unblocked equipment, including at least explicitly a SIM lock.
- 7) Insofar as the Customer is entitled to reimbursements, these will be paid out after 60 days and the outstanding items will first be settled before the Supplier pays the remainder to the Customer.
- 8) If and insofar as the Customer is entitled to certain reimbursements based on consumption of mobile telecommunications, these are based on the ARPU based on the first three months after the closing date.
- 9) The Supplier is never and without any exceptions liable for call costs incurred and/or the costs incurred by data usage.
- 10) The one-off costs, monthly fixed and/or consumption costs are invoiced to the Customer by their own provider or by the Supplier. If the Customer does not pay the monthly fixed and/or consumption costs, the Supplier or the provider is authorized to suspend the service without conditions or restrictions.
- 11) If the supplier supplies the SIM card, the Supplier may, at the Customer's request, provide a replacement SIM card at its applicable rates and conditions.
- 12) If the Customer wishes a change or relocation of his permanent connection, he will request the Supplier in writing to cooperate with this. Supplier shall not withhold its cooperation on such a request on unreasonable grounds. The Supplier can always attach (financial) conditions to the granting of such a request.

#### **ART. 20 NETWORK AND EVC RIGHT OF USE**

- 1) If the Supplier allows the Customer to use (grant) Access to its Network on the basis of the Agreement, the present article also applies.
- 2) Network means: the fiber optic network (commissioned by CrossNetworks), including all cables, network connection points, modem and other technical means that enable the transmission of signals and the provision of services via this fiber optic network.  
Access is understood to mean access to the Network of CrossNetworks under certain conditions, so that the Customer can use any EVC and/or services from other suppliers.
- 3) When using its Network, the Supplier grants the Customer the non-exclusive right to use the Network (Access) for the purpose of receiving and/or sending signals and/or services authorized in writing by the Supplier.
- 4) The right of use is limited to using the Network solely for personal use and is provided for the duration of the Agreement. Customer will only use these services for business purposes, unless explicitly agreed otherwise. The Supplier is entitled to set further conditions and/or to use other prices with regard to private use of this service.
- 5) The Network will be managed and maintained by or on behalf of the Supplier. The Network may be temporarily unavailable for maintenance purposes. Customer will provide all required cooperation in maintenance.
- 6) The right of use starts after payment has been made by Customer and the other obligations resting on Customer have been met.
- 7) Customer is responsible for the content of data traffic originating from and/or intended for Customer. The Customer indemnifies and holds the Supplier harmless for any form of claim, indictment or dispute of a third party in connection with (the content of) the data traffic of and/or intended for the Customer.
- 8) The Customer is obligated to carefully handle (parts of) the Network that have been installed in its business premises, home, garage and/or country estate and the like and will not make any changes of any kind whatsoever in this respect.
- 9) The Customer is expressly prohibited from having the Network, parts of the Network, the modem and/or (peripheral) equipment made available by the Supplier repaired by a third party other than the Supplier and/or a third party designated by the Supplier.
- 10) The Customer is expressly forbidden to remove ownership stickers from the modem and/or (peripheral) equipment.
- 11) If the Customer relocates elsewhere, transfers his business to a third party, the Customer is obligated

to inform the new owner that the network connection point, the modem and/or (peripheral) equipment installed in the business is the property of the Supplier.

- 12) The risk of loss, theft, misappropriation, loss or disappearance in any other way, as well as damage to the modem and/or (peripheral) equipment is transferred to the Customer at the time of installation, or delivery of the modem and/or (peripheral) equipment at the Customer. From that moment on, the Customer is obligated to take good care of the modem and/or (peripheral) equipment as well as to insure it and the Customer indemnifies the Supplier against any damage to the modem and/or (peripheral) equipment as long as the Customer holds it from the modem and/or (peripheral) equipment.
- 13) After the Agreement has been concluded for this purpose, the Supplier grants the Customer the non-exclusive right to use an EVC via the Supplier's Network. To obtain this EVC, the Customer must have a connection to the Network and a modem.
- 14) The EVC includes links that are included on the list provided by the Supplier upon entering into the Agreement.
- 15) The Supplier has the right to unilaterally change the composition of the EVCs on offer, the Customer is obligated to cooperate if this is deemed reasonable and fair. The supplier does not owe any compensation for this.
- 16) The right of use is limited to using the EVC exclusively for own use for obtaining other services from third-party suppliers, unless explicitly agreed otherwise. The Supplier is entitled to set further conditions and/or to use other prices with regard to the commercial use of this link.
- 17) The EVC will be maintained by or on behalf of the Supplier. The EVC may be temporarily unavailable for maintenance. Customer will provide all required cooperation in maintenance.
- 18) The right of use starts after payment has been made by Customer and the other obligations resting on Customer have been met.
- 19) After the Agreement has been concluded for this purpose, the Supplier will ensure that the Customer's address is connected to the Network by creating a Network Connection Point and (if applicable and at extra costs) delivery and installation of the modem. Installation of other (peripheral) equipment and/or related computer software and/or services from third parties is explicitly not carried out by the Supplier, unless otherwise agreed between the parties.

#### **ART. 21 FAIR USE POLICY**

- 1) Responsible use must be made of the Network (the fiber optic network installed (commissioned by

CrossNetworks), including all cables, network connection points, modem and other technical means that enable the transmission of signals and the provision of services via this fiber optic network make), other services and/or the other facilities offered. It is forbidden to use Services and/or offered facilities in such a way that:

- a) damage may occur in the systems and/or services of the Supplier and/or third parties;
  - b) Disruptions in use in the systems and/or services of the Supplier and/or third parties may occur.
- 2) It is forbidden to use the Service and/or other facilities offered for illegal practices and/or in violation of the Agreement. This includes, among other things, the following acts and behaviors:
    - a) non-compliance with the General Terms and Conditions of the Supplier and/or Third Party General Terms and Conditions;
    - b) failure to comply with applicable legislation and/or other relevant regulations;
    - c) infringing the rights of third parties or making it possible to infringe the rights of third parties such as but not limited to intellectual property rights and privacy rights;
    - d) spamming (unsolicited distribution (or at least making it possible for third parties) of advertising messages and other communications);
    - e) storing/distributing/receiving pornography;
    - f) sexual harassment, discrimination and/or other harassment;
    - g) distributing or making available to third parties obscene-offending and harassing material and/or other material of such nature;
    - h) threats;
    - i) storage and distribution of viruses, worms and/or other destructive activities;
    - j) unauthorized intrusion (hacking) of accounts, systems and/or networks of third parties and/or the Supplier and/or the performance and/or omission of any other act that makes hacking possible.
  - 3) The Customer will adhere to the generally accepted rules of conduct of the Internet, as laid down in the so-called Netiquette.
  - 4) The Supplier reserves the right, in its own judgment, if required to do so by law or court order and/or if a third party indicates this to the Supplier and/or there is a suspicion that the rights of a third party or supplier are being violated through the service, to decommission the use of the service and/or the other facilities offered, to remove the relevant information or to have it removed and/or to filter and/or to suspend its obligations
  - 5) The Supplier will never be liable for damage of whatever nature suffered by the Customer and/or

third parties as a result of the measures taken on the basis of this article and/or on behalf of the Supplier. The obligations to pay the agreed amounts remain fully applicable during the measures taken by and/or on behalf of the Supplier under this article.

#### **ART. 22 INTELLECTUAL PROPERTY**

- 1) With due observance of the limitations and conditions set out in the Agreement, the Supplier grants the Customer a non-exclusive, non-transferable right to use the software, equipment or other goods and goods/equipment made available in connection with the Agreement in the form in which they were delivered or made available, and only for internal purposes and to the extent necessary to be able to use the Services provided under the Agreement.
- 2) The intellectual property rights of all software, equipment or other items made available by the Supplier pursuant to or in connection with the Agreement rest with the Supplier or its suppliers and/or with a third party that the Supplier has authorized to provide or make available, software, equipment or other things to the Customer. The Customer only acquires rights to the extent that they are expressly granted to him in the Agreement.
- 3) The Supplier makes every effort to ensure that the Customer 's use of the software, equipment and other items and facilities made available by the Supplier in connection with the services do not infringe the intellectual or other property rights of third parties.
- 4) If a court has irrevocably decided that the Customer infringes the intellectual property rights of third parties as a result of an action or omission on the part of the Supplier, the Supplier shall, at its own discretion: a take measures to end the infringement, such as replacing the infringing service with a functionally equivalent other service or changing the service so that it no longer infringes but remains functional equivalent, or b terminate the services and return any amounts already received to the Customer for services not yet provided Pay.
- 5) The Customer is not permitted to remove and/or change any indication of intellectual property rights from the results of services.
- 6) The supplier reserves the right to introduce technical protection measures in the services. The Customer is not permitted to circumvent these technical protection measures or to offer resources for that purpose.
- 7) If the parties agree in writing that an intellectual property right with regard to designs, websites, data files, equipment or other materials, specifically developed for the Customer, will be transferred to the Customer, it does not affect the right or possibility of the Supplier to use and/or exploit the

components, general principles, ideas, designs, algorithms, documentation, works, programming languages, protocols, standards and the like underlying this development, without any restriction, for other purposes, either for themselves or for thirds. Nor does the transfer of an intellectual property right affect the right of the Supplier to make developments for itself or a third party that are similar or derived from those that are or are being done for the benefit of the Customer.

#### **ART. 23 CONFIDENTIALITY**

The Supplier is obligated to maintain the confidentiality of all confidential information and data of the Customer vis-à-vis third parties. In the context of the Assignment the Supplier will take all possible precautions to protect the interests of the Customer.

#### **ART. 24 WARRANTY**

- 1) Supplier does not guarantee uninterrupted or trouble-free delivery of Services.
- 2) If a guarantee has been agreed upon in the Agreement, the guarantee expires if:
  - a) Repairs, changes or extensions to the goods have been carried out by parties other than the Supplier without the prior written permission of the Supplier;
  - b) in the Supplier's opinion the goods have been neglected or used carelessly and/or improperly, treated and/or maintained;
  - c) type numbers, serial numbers and/or warranty stickers are damaged, removed and/or changed;
  - d) changes have been made to the guarantee certificate and/or purchase receipt;
  - e) defects have occurred due to incorrect insertion and/or leakage of replaceable batteries;
  - f) defects are caused by not connecting and/or installing (approved) goods in accordance with the regulations;
  - g) defects have arisen as a result of deviating environmental conditions, insofar as such conditions are indicated;
  - h) the equipment has been used for purposes other than normal business purpose;
  - i) defects are caused by other external causes;
  - j) the seal of the goods, if present, has been broken;
  - k) In the event of disruptions due to external calamities;
  - l) If the Customer fails to timely or properly comply with any obligations under the Agreement.

- 3) The activities covered by the guarantee are only performed within the Netherlands at an address to be specified by the Supplier.
- 4) The warranty period is not extended or renewed by the performance of warranty work, provided that the warranty on the warranty work performed, including the replaced parts, is 3 months.
- 5) Any shipping or travel costs can be charged to the Customer.

#### **ART. 25 LIABILITY**

- 1) If the Customer demonstrates that he has suffered damage as a result of an act or omission, non-performance or unlawful act of the Supplier, the Supplier is liable for the damage up to a maximum of the limits of the insurer applicable to the relevant claim, with a maximum of up to once the amount on the invoice, in the case of an Agreement with a duration of more than three months, the liability is furthermore, limited to the price owed for the last three months, with a coherent series of events applies as one event.
- 2) Contrary to the provisions of the previous paragraph, this provision applies for Service Level Agreements when the Availability is not met or the Solving time of an Incident is exceeded (see also the Service Level Agreement) applies. If the Customer has suffered demonstrable damage attributable to the Supplier as a result of the Availability and/or the Solving Time being exceeded, a compensation (fine) will be charged, this will be replaced by compensation: if the Dissolution time is <8 hours 10% of the monthly amount of the Service, if exceeded 8 – 24 hours 30% of the monthly amount of the Service, if exceeded > 24 hours 40% of the monthly amount of the Service, if the availability is not met 15% of the annual amount of the Service. The conditions that apply here are (i) the maximum reimbursement that the Supplier pays to the Customer per month is 100% of the monthly amount (ii) the maximum reimbursement per calendar year is a maximum of 15% of the annual amount, (iii) the reimbursement is calculated on the invoice amount limited to the affected Service from the Incident. The Customer has 30 days from the day of exceeding Solving time or not meeting the Availability to submit its claim to the Supplier, this period is an expiry period.
- 3) The Supplier has at all times the right to prevent or reduce the damage suffered or suffered by the Customer as far as possible.
- 4) Damage is exclusively understood to mean damage to persons, damage to property and direct financial loss.
- 5) The supplier is never liable (not by law or by virtue of the Agreement) for indirect damage, including consequential damage, lost profit, loss suffered, loss

of data, immaterial damage, missed savings, claims/claims of third parties, damage due to business interruption, damage related to or as a result of interruptions in or blocking of access to the system or the internet of the Supplier or third parties, a lack of security of the information stored by the Customer, acts of other parties counterparties or other internet users.

- 6) The limitations of liability for damage included in these terms and conditions do not apply if the damage is due to intent or gross negligence on the part of the Supplier's supervisor/management.
- 7) The liability limitations laid down in this article are also stipulated for the benefit of the persons or third parties engaged by the Supplier, who consequently have a direct appeal to these liability limitations.
- 8) Supplier is not liable for damage caused as a result of negligence or stagnation in the telecommunication infrastructure or transport facility supplied by third parties.
- 9) During the execution of the Assignment, the Customer and the Supplier will be able to communicate with each other by electronic mail at the request of one of them. The Supplier is not liable to the Customer for damage resulting from the use of electronic mail. Both the Customer and the Supplier will do everything that can reasonably be expected to prevent risks such as the spread of viruses and distortion.
- 10) The Supplier is not liable for damage of whatever nature caused by the fact that the Supplier relied on incorrect and/or incomplete data provided by the Customer, unless the Supplier should have been aware of this incorrectness or incompleteness.
- 11) The Supplier is not liable for damage of any nature whatsoever if the Customer acts contrary to the advice of the Supplier or its suppliers. Among other things, but not only: security advice, advice regarding minimum requirements for connections, advice on to backups and the like.
- 12) Damage must be reported to Supplier in writing or electronically as soon as possible, but no later than within 8 weeks after its occurrence. Damage that has not been notified to the Supplier within that period is not eligible for compensation.

#### **ART. 26 COMPLAINTS**

- 1) A complaint with regard to work/services performed or the invoice amount must be received by the Supplier on pain of forfeiting all claims within the specified periods in these General Terms and Conditions.
- 2) For complaints as referred to in Article 6, paragraphs 2 and 4 (delivery, completion and time limits), a period of 5 working days applies.
- 3) For complaints concerning an invoice, the period is 30 days from the date of the invoice.

- 4) For other complaints a period of 30 days applies from receipt of the documents, services, information about which the Customer complains, or, if the Customer demonstrates that he could not reasonably have discovered the defect within 30 days after the discovery of the defect.
- 5) The complaint must contain a description of the shortcoming in writing and as detailed as possible so that the Supplier is able to respond adequately.
- 6) In the event of a justified complaint, the Supplier has the choice between adjusting the price charged, correcting or re-performing the work/delivery in question free of charge or not fully or partially not performing the Order against a refund of the price already paid by the Customer in proportion.
- 7) A complaint does not suspend the payment obligation of the Customer.

#### **ART. 27 INDEMNIFICATION**

- 1) The Customer indemnifies the Supplier, his subordinates and assistants against claims from third parties with regard to intellectual property rights on materials or data provided by the Customer.
- 2) The Customer indemnifies the Supplier against any claims from third parties who suffer damage in connection with the implementation of the Agreement and which is attributable to the Customer.
- 3) The Customer indemnifies the Supplier against claims from third parties for damage caused by the fact that the Customer has provided the Supplier with incorrect or incomplete information.
- 4) The Customer indemnifies the Supplier against all claims from third parties – including shareholders, directors, supervisory directors and staff of the Customer, as well as affiliated legal persons and companies and others involved in the organization of the Customer – arising from or related to the activities of the Supplier on behalf of the Customer.
- 5) The Customer also indemnifies the Supplier against claims from third parties whereby the Supplier is deemed to be co-perpetrator of the Customer.
- 6) If the Customer provides the Supplier with information carriers, electronic files or software, etc., the Customer indemnifies the Supplier against damage caused by viruses and defects.
- 7) The Supplier can act as the processor of personal data for the Customer. The Customer undertakes to perform his activities in full in accordance with the applicable privacy laws and regulations (including GDPR) in this service. The Customer hereby fully indemnifies the Supplier against all damages and/or costs of whatever nature.

#### **ART. 28 FORCE MAJEURE**

- 1) Force majeure is understood to mean everything that is understood in this regard by law and case law.
- 2) Supplier is not bound by its obligation under the Agreement if fulfillment has become impossible due to force majeure, force majeure also includes: strike, blocks, government measures, shortcomings towards Supplier by suppliers or third parties engaged by Supplier or force majeure on the part of Supplier, suppliers of the Supplier, defects in goods, equipment, software or materials, power, electricity failure (at the Customer's location), failure in computer network, acts of third parties causing damage to the Service, cable breakage, fire, explosion, water damage, lightning strike, natural disaster, flooding, earthquake, general transport problems, lack of or illness of one or more employees, terrorism.
- 3) The Supplier is entitled to suspend the obligations under the Agreement during the period that the force majeure continues. If this period lasts longer than two months, each of the parties is entitled to terminate the agreement, without obligation to compensate damage to the other party.

#### **ART. 29 RETENTION OF TITLE AND DUTY OF CARE**

- 1) All goods delivered by the Supplier remain the property of the Supplier at all times as long as the Customer has not paid the amounts due.
- 2) The Customer will not dispose of, lend or pledge the goods as long as it has not yet acquired ownership, nor rent, lend or make available to third parties under any title whatsoever.
- 3) If third parties seize the goods delivered under retention of title or wish to establish or enforce rights thereon, the Customer is obligated to inform the Supplier of this as soon as can reasonably be expected.
- 4) The Customer must ensure that the items are placed in a suitable (dry and vibration-free) location. The Customer shall not affect the type and serial numbers, logos and/or other markings applied to the goods.
- 5) The Customer is not entitled to make changes to the goods (including changes to software supplied or implemented in the goods) or to move or damage them, or to have them made or moved by others than the Supplier, except with Supplier's agreement.
- 6) The Customer must immediately inform the Supplier if any seizure or threat of seizure of the goods or facilities or other property rights of the Supplier or of third parties engaged by it are threatened. As long as the ownership of the goods rests with the Supplier, the Supplier is entitled to recover the goods from the Customer. The costs of this are for the account of the Customer. The Customer must grant



the Supplier access to the location where the goods are located.

#### **ART. 30 DECOMMISSIONING CONNECTION**

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- 1) The Supplier is entitled to suspend one or more connections – temporarily or otherwise – in whole or in part if the Customer requests this or if the Customer fails to fulfill one or more of his obligations under the Agreement. The Customer continues to owe the fixed (periodic) costs during decommissioning.
- 2) The Supplier is never liable towards the Customer for damage or costs due to a decommissioning.
- 3) The supplier may charge reconnection costs.

#### **ART. 31 TRANSFERABILITY**

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- 1) The Customer is not permitted to transfer any right from an agreement concluded with the Supplier to third parties, other than when transferring his entire business or with the Supplier's written permission.
- 2) The Supplier is entitled to pass on to third parties all rights and obligations that it has under the Agreement, including the ownership of equipment, the right to receive compensation and information about the Agreement, or to transfer sell, or pledge equipment and/or the Customer to third parties.
- 3) By signing the Agreement, the Customer gives irrevocable permission in advance to transfer or take over a contract, assignment and/or pledge of the Agreement.
- 4) If the Agreement with the Customer has been transferred by the Supplier to ICT-Fund and the Supplier is declared in suspension of payment or in a state of bankruptcy, ICT-Fund guarantees that the service will be continued by a party to be designated by ICT Fund, if in the opinion of the Customer it is sufficiently plausible that the service can be provided by a third party in a similar manner, this party will take the place of the Supplier..

#### **ART. 32 EXPIRY PERIOD**

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Claims and other powers of the Customer on whatever basis against the Supplier in connection with the performance of work by the Supplier, shall in any case expire one year after the moment at which the Customer became aware or could reasonably have been aware of these rights and powers , unless stated otherwise in the General Terms and Conditions or Agreement.

#### **ART. 33 APPLICABLE LAW AND CHOICE OF FORUM**

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- 1) Dutch law applies exclusively to all Agreements between the Supplier and the Customer. The

applicability of the Vienna Sales Convention 1980 is excluded.

- 2) All disputes between the Supplier and the Customer are settled by the competent court in the district in which the Supplier has its registered office. Nevertheless, the Supplier has the right to submit the dispute to the competent court according to the law.
- 3) The original Dutch text of these General Terms and Conditions shall prevail over versions published in any other language.