



## General Terms and Conditions of VIZIWARE

### 1. Definitions

- 1.1 Customer: The potential or existing client issuing the assignment.
- 1.2 VIZIWARE: The company with limited liability "Viziware B.V. ", statutory established in Buitenkaag, the Netherlands, registered at the Dutch Chamber of Commerce, number 58377956, including all registered trade names.
- 1.3 Product: The (patented) technology and related services offered in any form by VIZIWARE.
- 1.4 Offer: Every written and/or electronic offer of the Product including amongst others, response to Request for Information; Request for Proposal or Tender.
- 1.5 Agreement: Any agreement concluded between VIZIWARE and Customer providing a negotiated and legally enforceable understanding of the Product to be provided and related services to be rendered.
- 1.6 Change Request Procedure: A project procedure whereby VIZIWARE and the Customer mutually agree in writing on change to, or extension of the contracted Product and the consequences thereof.

### 2. Applicability

- 2.1 These general terms and conditions apply to all offers and agreements between the Customer and VIZIWARE. In so far as parties have not explicitly agreed otherwise in writing, all provisions of these General Terms and Conditions will fully and unconditionally prevail between Customer and VIZIWARE.
- 2.2 Any reference made by the Customer to his own General Terms and Conditions whatever they are called and in whichever stage of the establishment of the agreement with VIZIWARE they are made, shall be explicitly rejected. The Customer is expected to accept the applicability of these General Terms and Conditions also with regard to later offers made to him by VIZIWARE, assignments issued by him to VIZIWARE and agreements concluded on his behalf with VIZIWARE.
- 2.3 VIZIWARE is entitled to amend these General Terms and Conditions. An amendment to these General Terms and Conditions shall come into force at the indicated date of commencement and in the absence of such a date, at the moment when the Customer has been informed of the amendment or the amendment has become known to him. The amended General Terms and Conditions shall be sent to the Customer in a timely manner.

### **3. Concluding an agreement**

- 3.1 An agreement is concluded at the moment VIZIWARE has received a confirmation of the assignment, signed by VIZIWARE and the customer. The confirmation is based on the information provided by the Customer to VIZIWARE at that time and is deemed to fully and accurately reflect the agreement.
- 3.2 The Customer is obliged to inform VIZIWARE in a timely manner and in writing, of any changes concerning the execution of an assignment issued to VIZIWARE by him. The assignment the amendment applies to is considered to be a new assignment that shall lead to an agreement only if and in so far as VIZIWARE accepts the assignment in writing. If VIZIWARE does not accept the new assignment, the original assignment shall be cancelled and reciprocal obligations to undo shall come into force for any part of the original assignment already carried out. If the (part) of the work already carried out, cannot in all reasonableness be made undone, the obligation arises to compensate the value of this execution, which is equivalent to the invoice value thereof. VIZIWARE is authorised to charge the Customer for the additional costs connected to the change in the execution of an assignment.
- 3.3 Both parties are free to prove that the agreement was concluded in a different manner.
- 3.4 The agreement is entered into for an indefinite period of time, unless it can be inferred from the terms of reference, nature, or scope of the issued assignment that the agreement was entered into for a specific period of time.

### **4. Offers**

- 4.1 All VIZIWARE offers are valid for 30 (thirty) days as of the date of the offer unless otherwise stated in the offer.
- 4.2 VIZIWARE's proposals and offers, including all corresponding documentation and test and demonstration programs made available by VIZIWARE are the property of VIZIWARE. They may not be copied, nor made available to third parties by Customer without the written permission of VIZIWARE. If no contract is concluded between VIZIWARE and Customer, Customer shall return all proposals, offers and further documentation to VIZIWARE. Customer will derive no further rights there from, nor continue to use them.

### **5. Responsibility of Customer**

- 5.1 Customer is responsible for the choice, use and correct application in its organization of the Product provided by VIZIWARE.



- 5.2 Customer is aware of the fact that the implementation of the VIZIWARE Software, especially in combination with changes in Customer's organization, may make high demands on the organization and project management of Customer.

## **6. Contract Duration and Extension**

- 6.1 Each agreement is entered into for the duration mentioned in the Agreement.
- 6.2 The Agreement ends at the expiration of the duration as referred to in the Agreement, without requiring any notice of termination from either Party.
- 6.3 Should Customer wish to extend the duration of the Agreement, Customer must inform VIZIWARE thereof in writing at least one month before the expiration of the Agreement, in which case the Agreement can be extended subject to the approval of VIZIWARE. VIZIWARE reserves the right to adjust the terms and conditions after consultation with Customer. The extension of the Agreement shall be confirmed in writing.

## **7. Performance of Services**

- 7.1 VIZIWARE shall provide the Product with due care in accordance with the arrangements and procedures as laid down in writing in the Agreement with Customer.
- 7.2 VIZIWARE shall provide suitable technical support based on the qualifications required for the product or services. If desired or necessary, VIZIWARE can engage a third party.
- 7.3 Should Customer not be satisfied with the quality of the services provided, VIZIWARE should be informed thereof in writing as soon as possible, but no later than 30(thirty) days after it has been established. At that time, it will be decided, in consultation with Customer, how and under what conditions rectification or substitution will be arranged.
- 7.4 VIZIWARE is not under any obligation to follow directions from Customer that change or supplement the content or scope of the services agreed upon; should, however, these directions be followed, Customer should inform VIZIWARE thereof in writing and the activities in question will be invoiced additionally in accordance with the VIZIWARE standard rates.
- 7.5 Should the Agreement be entered into with a view to execution by a professional referred to by name, VIZIWARE can always substitute this person by one or more persons with the same qualifications. Substitution of, and the conditions under which, will take place in mutual agreement. In the event that Customer refuses the offered substitute with equal qualifications, VIZIWARE reserves the right to terminate the Agreement.

## **8. Fees**

- 8.1 The Product provided to Customer will be invoiced in accordance with the fees mentioned in the Agreement.
- 8.2 All mentioned rates and prices are exclusive of travel costs, travel time, other fees as well as value added tax (BTW) or other levies and charges possibly imposed by the government and/or banks.
- 8.3 Travel expenses, travel time and other charges will be invoiced separately at the actual costs incurred and against VIZIWARE standard rates. Preferably, the expected travel expenses will be agreed upon with Customer in advance in writing.
- 8.4 In the event that VIZIWARE has made an offer based partially or in full on an own estimate relating to the type and scope of the services and made such known, then VIZIWARE reserves the right to amend in writing the agreed services in consultation with Customer,
- 8.5 Should invoicing take place in accordance with subsequent costing ('nacalculatie'), VIZIWARE may adjust the fees stated in the Agreement subject to 30 (thirty) days' notice in writing, unless otherwise agreed. In case of an increase, Customer may terminate the Agreement in writing within two weeks of the notification. Should Customer fail to do so, the increase becomes effective. VIZIWARE shall not be obliged to fulfil the Agreement in case of termination for this reason, nor be held liable for any consequences of the termination
- 8.6 In the event that Customer terminates the services, for whatever reason, before completion of the agreed assignment, Customer will owe VIZIWARE remuneration for all services performed by VIZIWARE until that moment and all additional costs. VIZIWARE also has the right to invoice Customer for any days and services already agreed upon or planned.
- 8.7 Agreements that already have been concluded, for which invoicing takes place on the basis of subsequent costing, may be cancelled in writing by Customer without charge no later than 5 workdays before actual commencement. In the event that the Agreement and/or planned days are cancelled within the 5 workday term, VIZIWARE will charge Customer in full for the agreed planned days and services. The date on which VIZIWARE receives the written cancellation is decisive for the criterion of 5 workdays.

## **9. Amendments and Additional Work**

- 9.1 Should VIZIWARE perform services that fall outside the agreed services, at the request of or with the prior approval of Customer, Customer shall pay VIZIWARE for these services according to the standard VIZIWARE rates. However, VIZIWARE is not obliged to comply with such a request and may require that a separate written agreement be concluded in this respect.



- 9.2 Should the requirements or specifications be extended or changed whether or not via the Change Request Procedure, this will constitute additional work, which will be charged accordingly. In the event that VIZIWARE considers work to be additional, it will inform Customer thereof as soon as possible. However, VIZIWARE is not obliged to comply with any Customer request to perform such activities and may require that a separate written agreement be concluded in this respect.

## **10. Invoicing and Payment**

- 10.1 Customer shall pay all invoices within 30 (thirty) calendar days of the date of invoice, unless advance payments are being agreed upon between VIZIWARE and the Customer. Payment will take place without any set-off or suspension for any reason whatsoever, except where it is decided by judgment of a court that Customer has grounds for having a counterclaim capable of being set-off or a reason for suspension. In the event that Customer does not agree with an VIZIWARE invoice, this should be communicated by Customer in writing at the latest before the invoice due date.
- 10.2 Should Customer fail to pay the amounts due within the agreed period, Customer shall owe 1% interest per month on the outstanding amount, without any notice of default being required. If after notice of default Customer still fails to pay, the debt may be given to a third party for collection in which case, in addition to the total payable amount, Customer shall also be obliged to pay extra-judicial collection charges, including attorney's fees, amounting to no less than 15% of the total amount.
- 10.3 If Customer has been granted a moratorium on payments, provisionally or otherwise, or in the event that the evaluation of Customer's creditworthiness gives rise to this, VIZIWARE may require Customer to furnish adequate security, in default of which VIZIWARE may suspend the execution of the Agreement.

## **11. Dissolution and Termination**

- 11.1 Either party has the possibility to dissolve the Agreement only if the other party fails imputably to fulfil the fundamental obligations pursuant to the Agreement after having been given proper and detailed notice of default with a reasonable term to cure the breach.
- 11.2 VIZIWARE may terminate the Agreement in full or in part by written notice, without notice of default or judicial intervention, with immediate effect in the event that Customer is granted a moratorium on payments, provisionally or otherwise, if bankruptcy proceedings have been instituted against Customer or if its company is wound up or liquidated. VIZIWARE shall not be liable for any damages due to this termination.

11.3 Should Customer at the time of dissolution as referred to in section 11.1 or in case of termination, already have received services for the execution of the Agreement, these services provided and any corresponding payment obligations will not be subject to nullification. Any amounts invoiced by VIZIWARE before a dissolution or termination with regard to what has already been provided or delivered for the execution of the Agreement, will remain payable in full and become immediately due and payable at the moment of dissolution or termination

## **12. Customer Co-operation**

12.1 Customer will co-operate in the execution of the Agreement, and shall undertake all useful and necessary actions on time and provide data, information, including access or temporary access to the necessary data records and Customer experts and furthermore provide in a timely way all co-operation reasonably needed by VIZIWARE for the execution of the Agreement.

12.2 If the information necessary for the execution of the Agreement is not made available to VIZIWARE, or not made available on time or in accordance with the Agreement, or if Customer does not fulfil its obligations in any other way, this could affect the planned time of completion of the agreed services and the corresponding costs. In any case, VIZIWARE has the right to suspend the execution of the Agreement and may charge the resulting costs and any idle time according to its standard rates.

12.3 All terms and delivery dates, objectives and/or estimates mentioned by VIZIWARE in the Offer and/or Agreement or elsewhere have been determined to the best of its knowledge as nonbinding estimates, based on data known to VIZIWARE at the time of the issue of the Offer or conclusion of the Agreement. If any term is exceeded or if objectives cannot be met, VIZIWARE and Customer will consult as soon as possible. VIZIWARE has the right to adjust the rates and conditions in either case if it is not to blame.

## **13. Contact Persons**

13.1 Customer and VIZIWARE shall each designate a contact person and include them in the Agreement. The contact persons will be responsible for a smooth and satisfactory co-operation between Customer and VIZIWARE as well as for effective internal co-ordination in their own organization.

## **14. Working Conditions**

14.1 Customer shall provide the VIZIWARE professionals with the necessary facilities and authorizations, such as adequate working space and the necessary materials, including equipment, programming, telephone- and computer time in a timely way, so that they may properly render their services.



14.2 Customer shall provide the VIZIWARE professionals with access to the site where the services are to be rendered, and enable these employees to perform their services under Customer's normal and agreed working conditions.

14.3 The VIZIWARE professionals will observe the current norms and house rules of Customer.

## **15. Liability**

15.1 Should VIZIWARE, after proper written notice of default, repeatedly or to a considerable degree fail to meet its obligations, VIZIWARE's liability shall be limited to the extra costs incurred by Customer that are the direct result of the breach of contract attributable to VIZIWARE. VIZIWARE's aggregate liability per Agreement, however, shall be limited to the total amount, excluding value added tax (BTW), paid to VIZIWARE by Customer for services rendered, subject to a maximum of € 50,000. The maximum liability will be reduced by any credits granted by VIZIWARE. Customer should institute any legal action within one year after the event in question.

15.2 Any further liability of VIZIWARE for damages suffered by Customer is excluded, irrespective of the way any legal action is instituted, be it for breach of contract, tort or otherwise. VIZIWARE is in no event liable for damages caused by late delivery or late performance of services. Any liability of VIZIWARE for business damages, indirect or other consequential damages including loss of profits, loss of anticipated savings or loss of data is expressly excluded.

## **16. Force Majeure**

16.1 In these General Terms and Conditions force majeure is understood to mean: each circumstance or event beyond VIZIWARE's control, which prevents wholly or partially, whether or not temporarily, compliance with the obligations towards the Customer or because of which, compliance with the obligations cannot in reasonableness be expected from VIZIWARE, irrespective of whether the circumstance or event was to be expected when the agreement was concluded, such as among other things government measures, fire, accidents, labour unrest and non-compliance for whatever reason, by third parties engaged by VIZIWARE

## **17. Confidential Information**

17.1 Both parties shall treat and keep all information received from the other party as confidential and secret. If desired, this could be agreed upon in a separate Non-Disclosure Agreement.

17.2 Customer will treat VIZIWARE software programs, documentation and other material and information received from VIZIWARE under the terms of the Agreement in such a way as to prevent any misuse.



17.3 VIZIWARE and Customer will take all possible measures to protect the confidentiality of any information and data provided by and relating to the other party's organization that is confidential.

## **18. Copyright**

18.1 Copyright with respect to any software, modifications, enhancements or other materials such as analyses, designs, documentation, reports as well as preparatory material developed or made available, will be held exclusively by VIZIWARE and related parties, unless otherwise agreed under the terms of the Agreement.

18.2 Customer is permitted to use the software, modifications, enhancements and other materials delivered without limitation, only within its own company or organization, unless otherwise agreed under the terms of the Agreement.

## **19. Applicable law and choice of forum**

19.1 All agreements between the Customer and VIZIWARE shall only be governed by Dutch law.

19.2 Any disputes resulting from an agreement concluded with VIZIWARE, shall exclusively be decided upon by the competent Court in the Netherlands.

19.3 Contrary to the provisions in paragraph 2, the Customer and VIZIWARE are authorised to submit disputes to an arbitration board.

October 2013