

## GENERAL SALE- AND DELIVERY CONDITIONS FRUITION PARTNERS

### 1. GENERAL

#### 1.1 Applicability

- 1.1.1 These conditions are applicable to all proposals and/or deliveries made by Fruition Partners and agreements and/or other legal relationships between Fruition Partners and Customer, the resulting provisions and related activities regardless of whether or not they are based on a verbal, written and/or electronic agreement, unless otherwise agreed upon in writing.
- 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 Fruition Partners, unless explicitly accepted in writing by Fruition Partners.
- 1.1.3 The General Sale- and Delivery Conditions Fruition Partners are filed with the Chamber of Commerce in The Hague under number 27178903 Fruition Partners reserves the right to make alterations and/or additions to the General Sale- and Delivery Conditions Fruition Partners.
- 1.1.4 The modified General Sale- and Delivery Conditions Fruition Partners will become applicable, unless objections against modifications are made in writing within 30 (thirty) days of the notification date of the change.
- 1.1.5 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 In the General Sale- and Delivery Conditions Fruition Partners 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 **Fruition Partners:**  
The Fruition Partners organization that enters into the legal relationship with Customer and has declared the General Sale- and Delivery Conditions Fruition Partners applicable.
- 1.2.3 **Fruition Partners Products:**  
All products and services provided by Fruition Partners 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 Fruition Partners.
- 1.2.4 **Third Party General Conditions:**  
Third Party General Conditions are amongst others understood as the delivery conditions, license conditions, warranty conditions or other conditions maintained by a third party.
- 1.2.5 **Third Party Products:**  
All products and services provided by Fruition Partners, 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 Fruition Partners.
- 1.2.6 **Error:**  
The failure to fulfill the functional specifications set down in writing by Fruition Partners and, in cases of developing custom work, the functional specifications expressly agreed upon in writing.
- 1.2.7 **Discrepancies:**  
Incompleteness, a deviation from what has been ordered or transportation damage.
- 1.2.8 **Customer:**  
Anyone who requests and orders the delivery of Products.
- 1.2.9 **Products:**  
All Fruition Partners Products and/or Third Party Products provided by Fruition Partners, the resulting provisions and related activities.
- 1.2.10 **Business Days:**  
Normal Dutch working hours (8.30-17.00 CET) and days (Monday through Friday) with the exception of public holidays.
- #### 1.3 Offers
- 1.3.1 All offers and/or prices are without engagement, unless the offer explicitly indicates otherwise in writing.
- #### 1.4 Agreements
- 1.4.1 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.
- 1.4.2 Each party 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 the other party is a

person and becomes deceased, if the other party submits a legal request for debt restructuring, if bankruptcy or suspension of payment has been filed for by the other party, if the other party is in a state of bankruptcy or suspension of payment has been granted or if the other party's company is liquidated or ended for any reason other than reconstruction or company merger. In these cases, any claim by the party, as set out above, will be immediately due.

#### 1.5 Co-operation/Information Requirements For Customer

- 1.5.1 All assignments are carried out by Fruition Partners on the basis of data, information, requests and/or requirements made known to Fruition Partners by Customer.
- 1.5.2 If changes and/or new facts arise in regard to data, information, requests and/or requirements previously provided, Fruition Partners will always be fully justified, in consultation with Customer, to adjust the agreement to these new circumstances or to dissolve or annul the agreement.

#### 1.6 Confidentiality/Non-competition

- 1.6.1 Fruition Partners and Customer mutually commit themselves to the confidentiality of all data and information concerning each other's organization, clients, files and Products, 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.
- 1.6.2 Customer and its clients will not enter into any direct or indirect commercial, employment, or other such relations with employees from Fruition Partners during the agreement and for a period of 12 (twelve) months after termination or dissolution of the agreement, without the prior written consent of Fruition Partners. Customer will ensure that its clients will comply with the foregoing obligation.
- 1.6.3 In the event that Customer breaches clause 1.6.2, Customer will be charged, without further notification required, a fine of € 50,000 (fifty thousand euros) for each breach, undiminished the right of Fruition Partners to claim full compensation for damages incurred.

#### 1.7 Liability

- 1.7.1 A party's total liability shall be limited to compensation for direct damage and to a maximum of the amount paid for the agreement (excluding VAT), during the calendar year in which the damage took place, to a maximum of € 250.000,- (two hundred and fifty thousand euros), whereby a sequence of events is regarded as one event.
- 1.7.2 A party'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.
- 1.7.3 Direct damage is exclusively understood as:
- The reasonable expenses which the party suffering the damage would have to incur to make the performance of the party causing the damage to conform to the agreement; this alternative damage shall not be compensated, however, if the agreement is rescinded by or at the suit of the party suffering the damage;
  - The reasonable costs made in determining the cause and extent of the damage;
  - The reasonable costs incurred in prevention or limitation of the damage, to the degree that the party suffering the damage can demonstrate that these costs have led to the limitation of the damage.
- 1.7.4 A party'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.
- 1.7.5 With the exception of the cases named in this clause 1.7, parties have no liability for damage compensation regardless of what an action towards compensation could be based upon. The maximum amounts as set out in clauses 1.7.1 and 1.7.2 do not apply in the case of malicious intent (opzet) or reckless disregard (bewuste roekeloosheid).
- 1.7.6 The liability of the party causing the damage exists solely when the party suffering the damage immediately and appropriately notifies the party causing the damage of the deficiency in writing, proposing therein a reasonable time period for correction of the deficiency and the party causing the damage 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 the party causing the damage is able to react adequately.
- 1.7.7 The condition for the existence of any right to compensation is always that the party suffering the damage notifies the party causing the damage 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.

- 1.7.8 Customer indemnifies Fruition Partners 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 Fruition Partners.
- 1.7.9 Fruition Partners's liability for damage caused by Third Party Products which Fruition Partners has delivered to Customer is limited to what has been set out in clause 1.7 and to the degree to which the third party in question has accepted liability towards Fruition Partners.
- 1.8 Transfer**
- 1.8.1 The agreement between Fruition Partners 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 Logicialis SMC.
- 1.8.2 Customer gives Fruition Partners in advance the right, without needing the explicit approval of Customer, to transfer the whole agreement or parts thereof to:
- holding-, sister- and/or subsidiary companies;
  - a third party in the case of merger or acquisition of Fruition Partners.
- In the event this happens, Fruition Partners will inform Customer.
- 1.9 Force Majeure**
- 1.9.1 Neither party is obligated to fulfill any obligation if it is prevented from doing so as a result of circumstances, which can be considered beyond its 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 Fruition Partners's power as well as business risks of Fruition Partners, these include but are not limited to failure to perform by a supplier of Fruition Partners, the late or non-availability of required information and specifications and/or changes in such information, incorrect functional specification of Third Party Products and/or products delivered by a third party, bad weather conditions, fire, explosions, electricity failures, network failures, 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.
- 1.9.2 When force majeure is of a temporary nature Fruition Partners shall strive to provide a reasonable alternative, in consultation with Customer. If this is not possible Fruition Partners has the right to suspend its commitments until the force majeure has ceased to exist without being obliged to any form of damage compensation.
- 1.9.3 Fruition Partners reserves the right, in the case of force majeure, to collect payment for obligations already fulfilled before force majeure was known.
- 1.9.4 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.
- 1.10 Nullity**
- 1.10.1 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.
- 1.10.2 In 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 within which the parties shall strive for the maintenance of this agreement (or the remainder of the term in question) in its totality.
- 1.11 Applicable Law and Dispute Mechanism**
- 1.11.1 All agreements made between Fruition Partners 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.
- 1.11.2 Any dispute between parties arising under any agreement 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, such as mediation.
- 1.11.3 If the SGOA declares itself unauthorized or if parties mutually agree to such, disputes will be placed before a qualified court in Amsterdam, The Netherlands.
- 1.11.4 Either party also may, without waiving any remedy under the agreement, seek from the qualified court in Amsterdam 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).
- 1.11.5 The General Sale- and Delivery Conditions Fruition Partners are translated from the original Dutch version and the intention thereof is valid in any disagreement.
- 2. Fruition Partners PRODUCTS**
- 2.1 Advice**
- 2.1.1 All Products that can be considered advice or which can be described as advice will only be given to the best of Fruition Partners's knowledge and capability.
- 2.1.2 Fruition Partners 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.
- 2.1.3 Fruition Partners will provide advice on the basis of the conditions required by Fruition Partners and information received from Customer as mentioned in clause 1.5. 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.
- 2.2 Activities**
- 2.2.1 Any activities will take place without interruption on Business Days and under normal working conditions.
- 2.2.2 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.
- 2.2.3 If parties agree that activities will take place in phases, Fruition Partners will be entitled to postpone activities for the following phase until Customer has accepted in writing activities performed in the previous phase.
- 2.2.4 Fruition Partners will only be obligated to follow timely and reasonable instructions given by Customer when performing activities if agreed upon explicitly in writing. Fruition Partners 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.
- 2.2.5 Fruition Partners is entitled, without the explicit consent of Customer, to make use of third parties when performing activities.
- 3. THIRD PARTY PRODUCTS**
- 3.1 Third Party Products**
- 3.1.1 If Fruition Partners delivers Third Party Products to Customer, the Third Party General Conditions will be applicable to the agreement in addition to these General Sale- and Delivery Conditions Fruition Partners.
- 3.1.2 Fruition Partners will deliver rights for Third Party Products under the same conditions as indicated in the Third Party General Conditions.
- 3.1.3 No maintenance, support or other services will be carried out by Logicialis SMC on Third Party Products, unless agreed upon otherwise in writing and under the conditions of such separate agreement.
- 3.1.4 With regard to Third Party Products delivered, Fruition Partners will provide:
- service under, at most, the same conditions as provided for in the Third Party General Conditions;
  - the warranty under the same terms and conditions as indicated in the Third Party General Conditions.
- 3.1.5 Repair on Third Party Products:
- Notwithstanding what has been stated in clause 4.4, under no circumstances will Third Party Products be replaced unless Customer makes an explicit request and pays all connected costs in advance.
  - Operational costs will be applicable on all repairs. In the event that repairs take place outside of Fruition Partners's office, compensation for travel and waiting time and other related costs will be charged.
- 3.2 Third Party General Conditions**
- 3.2.1 Third Party General Conditions that are declared applicable in these General Sale- and Delivery Conditions Fruition Partners shall, when available to Fruition Partners, be provided on request. Third Party General Conditions will be delivered in the same format and language as received by Logicialis SMC.
- 3.2.2 The General Sale- and Delivery Conditions Fruition Partners have priority

- over Third Party General Conditions unless indicated otherwise. When there is conflict between the General Sale- and Delivery Conditions Fruition Partners and Third Party General Conditions, Fruition Partners has the right to declare the conflicting terms of the Third Party General Conditions 4.4.2 inapplicable or applicable.
- 3.3 Installation and Implementation**
- 3.3.1** At the request of Customer Fruition Partners will install and/or implement the Third Party Products or have them installed and/or implemented, against the than applicable rates and conditions. In the event Fruition Partners carries out the installation and/or implementation Customer gives Logicalis SMC the explicit prior approval to accept the Third Party General Conditions which are applicable to the Third Party Products in question on behalf of Customer in order to carry out the installation and/or implementation. 4.4.4
- 3.3.2** Prior to installation and/or implementation Customer will see to it, at its own expense, that all conditions required by Fruition Partners have been met in order to ensure a successful installation and/or implementation. 4.4.5
- 3.3.3** 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. 4.4.6
- 4. DELIVERY**
- 4.1 (Delivery) Dates**
- 4.1.1** All (delivery) dates which may be named by and may be applicable to Fruition Partners are determined to the best of Fruition Partners's knowledge on the basis of information made known to Fruition Partners and will be taken into consideration as much as possible.
- 4.1.2** (Delivery) dates shall therefore not be considered to be absolute (delivery) dates within which must be delivered, but a time period within which Fruition Partners shall strive with best efforts to deliver the agreed upon items. If it is not possible to keep to the (delivery) date, then Fruition Partners and Customer will consult with each other to agree on a substitute (delivery) date. 4.4.8
- 4.1.3** Exceeding a given (delivery) date which may be applicable never constitutes an attributable shortcoming by Fruition Partners. Fruition Partners does not accept liability under any circumstances in cases where the (delivery) date may be exceeded. 4.4.9
- 4.2 Reservations**
- 4.2.1** Customer's rights, such as but not limited to the transfer of Products, 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 to Fruition Partners at Customer's expense within one week of receiving the instruction from Fruition Partners to do so. All other remedies in law remain applicable. 4.5
- 4.2.2** If Customer fabricates a new product, on the basis of the Products delivered by Fruition Partners, this will be done on behalf of Fruition Partners and Customer will keep the new product for Fruition Partners until all amounts due on the basis of the agreement have been paid on time and in full. Fruition Partners will maintain all the rights as owner of the new product until the moment payments have been made on time and in full. 4.5.1
- 4.3 Delivery and Risk**
- 4.3.1** Delivery of the Product takes place at the moment that the Product is offered for the first time at the address as agreed upon with Customer. 4.5.2
- 4.3.2** Customer will bear the risk of the Products delivered from the moment of delivery or from the moment in which Customer does not make it possible for Fruition Partners to make a delivery. Customer will therefore be held accountable for full payment of the Products delivered regardless of the destruction of or the decline in value of the Products delivered due to circumstances for which Logicalis SMC cannot be held directly accountable. 5.1.3
- 4.3.3** The delivery of services by or through Fruition Partners takes place at the place and time that the services are performed. 5.1.4
- 4.4 Warranty**
- 4.4.1** All claims regarding:
- a) Discrepancies in the delivery of the Products, must be submitted in writing to Fruition Partners within 8 (eight) days from the moment of delivery, as set out above in clause 4.3. 5.1.6
- b) Errors in the Products, must be submitted in writing to Logicalis SMC within 3 (three) months from the moment of delivery, as set out above in clause 4.3. 5.1.7
- c) Errors in the Products that consists of services, must be submitted in writing to Fruition Partners within 2 (two) months from the moment of delivery, as set out above in clause 4.3.
- The right to make a claim does not exempt Customer of its obligations towards Fruition Partners.
- The repair of Discrepancies and/or Errors shall take place at the location to be determined by Fruition Partners. Fruition Partners, at Fruition Partners's sole discretion, is entitled to repair, modify or replace the Products, without any entitlement to damage compensation by Customer. Fruition Partners is also entitled to install temporary solutions, emergency solutions, detours and/or other problem-avoiding measures.
- Fruition Partners is entitled to invoice its usual prices and the costs for repair, modification or replacement of the Products if the Discrepancy and/or Error is deemed to be caused by Customer, is the result of improper and non-careful use, or is the result of other causes that may not be attributed to Fruition Partners.
- The return of Products may only take place after the prior written approval of Fruition Partners. Customer must follow the return instructions given by Fruition Partners. Customer is required in the event Products are returned to return the Products in their original, complete and undamaged packaging. Return will take place at the cost of Customer.
- An Error and/or Discrepancy only exists where such can be demonstrated and reproduced.
- The warranty does not cover the reconstruction and/or repair of mutilated and/or lost data and/or information. Fruition Partners does not warrant that the Products shall function without interruption or without Errors, are suitable for every intended use of Customer and/or will lead to results desired by Customer during or after the warranty period. The warranty obligation is void if Customer alters the Products, or has them altered, without the written permission of Fruition Partners.
- After lapse of the terms as mentioned in clause 4.4.1 claims shall no longer be accepted and every right to the repair of Errors and/or Discrepancies in Products, or modification and/or replacement of Products shall lapse, unless agreed upon otherwise in writing.
- The warranty provided on Third Party Products is limited to the Third Party General Conditions as maintained by the supplier of Third Party Products as described in clause 3.
- 4.5 Replacement Performance**
- 4.5.1** Fruition Partners is permitted to deliver alternative Products than those Products ordered by Customer if the performance and operation of such alternative Products is essentially no different from the Products ordered.
- 4.5.2** If the agreement is concluded with the objective of having activities carried out by a particular individual, Fruition Partners will be entitled to replace this person with another person with the same qualifications.
- 5. PRICES/PAYMENTS**
- 5.1 Prices and Payments**
- 5.1.1** All prices exclude VAT and other levies imposed by the government. The amounts invoiced to Customer will be in Euro's and shall include applicable VAT and other levies possibly imposed by the government.
- 5.1.2** Fruition Partners will invoice the amount owed by Customer immediately and appropriately itemized. Customer will pay all amounts indebted within 14 (fourteen) days of the invoice date or the term as mentioned on the invoice. These payments will not be subject to compensation or deduction other than when permitted by law.
- Discounts are considered to be given for one instance only.
- Fruition Partners is entitled to require payments in advance of Customer or have Customer offer collateral to the satisfaction of Fruition Partners.
- Should Customer fail to fulfill any payment obligation, Customer is in breach without any further notification of breach being required. Logicalis SMC 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.
- Until full payment has been made, Fruition Partners has the right to suspend all services and obligations to Customer. Customer's obligation to meet Customer's commitments remains unchanged.
- The indebted amount in clause 5.1.1 may be increased with exchange costs, bank costs, 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 Fruition Partners's office. In the event that activities need to take place outside of Fruition Partners's office, hourly rates, call-out charges, travel and/or kilometer compensation, hotel expenses and any other costs connected to such services will be charged.

## **5.2 Price Changes**

**5.2.1** The prices agreed to between Fruition Partners and Customer are among other things based on the costs of salaries, social premiums, materials, and travel and accommodation costs, third party prices, etc., as well as the rate of exchange between the currencies as applicable at the time of closing of the agreement. Fruition Partners is authorized, in case of changes to one or more of the cost items and/or changes in the rate of exchange, to immediately adjust the prices to these changes.

**5.2.2** Fruition Partners will offer Customer the possibility to become acquainted with possible changes in prices. Fruition Partners is entitled to immediately bill price changes for ongoing projects.

**5.2.3** 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 the total price increase during 1 (one) year exceeds the annual 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 7%.

## **6. INTELLECTUAL PROPERTY RIGHTS**

### **6.1 Rights of Customer and Fruition Partners**

**6.1.1** Except where Third Party Products are concerned, all intellectual property rights, industrial property rights, and other rights resulting from all activities carried out by Fruition Partners, 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 Fruition Partners.

**6.1.2** 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 Fruition Partners.

### **6.2 Indemnification**

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

- a) notifies Fruition Partners 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 Fruition Partners, including all negotiations and arrangements that might lead to a settlement.

**6.2.2** Fruition Partners shall not indemnify Customer against an action in the event that:

- a) such is based on the fact that the Third Party Products 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.