

# TERMS AND CONDITIONS

These are the General Terms and Conditions of Pohlmann Software Solutions (hereinafter referred to as "PSS"), a company with address Westeinde 18E, The Hague, The Netherlands. PSS is registered with the Dutch Chamber of Commerce (*Kamer van Koophandel*) under number 96149426.

## Definitions

In these General Terms and Conditions, the following terms shall have the following meanings unless expressly stated otherwise:

**General Terms and Conditions:** these general terms and conditions as stated below.

**Company:** the Other Party acting in the course of a business or profession.

**BW:** the Dutch Civil Code (*Burgerlijk Wetboek*).

**Assignment:** All work, in whatever form, performed by PSS for or on behalf of the Other Party.

**Distance service:** a contract concluded between PSS and the Other Party within the framework of an organised system for distance service, whereby, up to and including the conclusion of the contract, exclusive or joint use is made of one or more techniques for distance communication;

**Service:** All work, in whatever form, performed by PSS for or on behalf of the Other Party.

**Contract:** Any agreement concluded between PSS and the Other Party.

**Other Party:** the Company that has accepted these General Terms and Conditions and commissioned a Service.

Unless the General Conditions expressly provide otherwise, in interpreting the General Conditions, the singular shall be deemed to include the plural and vice versa.

## 1. Applicability

1. These General Terms and Conditions apply to every offer and Contract concluded between PSS and the Other Party, unless these General Terms and Conditions have been expressly deviated from by the parties in writing.
2. These General Terms and Conditions also apply to agreements with PSS, for the execution of which third parties need to be involved.
3. Deviations from the Agreement and General Terms and Conditions shall only be valid if expressly agreed in writing between the parties.

## 2. Offers

1. All offers where the contrary is not expressly stated shall be deemed to be non-binding and may be revoked at any time, even if they contain a deadline for acceptance. Offers may also be revoked by PSS in writing immediately after receipt of acceptance, but at the latest within two working days, in which case no contract shall be concluded between the parties.

2. All offers from PSS are valid for 14 days unless otherwise stated.
3. PSS cannot be held to its offers if, based on reasonableness and fairness and generally accepted views, the Other Party should have understood that the offer or any part thereof contains an obvious mistake or slip of the pen.
4. If the acceptance, whether or not on minor points, differs from the offer included in the quotation, PSS shall not be bound by it. The Contract shall then not be concluded in accordance with this deviating acceptance, unless PSS indicates otherwise.

### **3. Conclusion of agreement**

1. The Contract is established by the acceptance by the Other Party of PSS's offer.
2. Offers may only be accepted in writing (including by electronic means).
3. At the moment that PSS receives an order confirmation from the Other Party, a Contract between the parties comes into being.
4. The Contract replaces, and supersedes, all previous proposals, correspondence, agreements or other communications, whether written or oral.

### **4. Implementation of agreement**

1. The Contract shall be executed by PSS to the best of its knowledge and ability, in accordance with the requirements of good workmanship. The application of articles 7:404, 7:407 paragraph 2 and 7:409 of the BW is expressly excluded.
2. PSS shall determine the manner in which and by which person(s) the Order is to be executed. PSS is entitled to have certain activities carried out by third parties.
3. PSS is entitled to execute the Contract in phases. If the Contract is executed in phases, PSS has the right to invoice each executed part separately. If and as long as this invoice is not paid by the Other Party, PSS is not obliged to execute the next phase and has the right to suspend the Contract.

### **5. Changes and additional work**

1. If, during the execution of the Contract, it appears that for proper execution it is necessary to modify or supplement the Contract, PSS shall inform the Other Party of this as soon as possible. The Parties shall then proceed to amend the Contract in good time and in mutual consultation.
2. If the parties agree that the Contract will be amended/added to, this may affect the time of completion of the execution. PSS will inform the Other Party of this as soon as possible.
3. If the amendment or supplement to the Contract will have financial, quantitative and/or qualitative consequences, PSS shall inform the Other Party of this in advance.
4. If a fixed rate or fixed price has been agreed, PSS shall indicate the extent to which the amendment/addition to the Contract affects the rate/price. In doing so, PSS shall attempt - as far as possible - to provide a quotation in advance.
5. PSS will not be able to charge additional costs if the modification/addition is the result of circumstances to PSS.

6. Amendments to the Agreement originally concluded between the parties are only valid from the moment these amendments have been accepted by both parties through an additional or amended Agreement.

## **6. Obligations of the Other Party**

1. The Other Party shall ensure that all data, instructions, materials and/or equipment which PSS indicates to be necessary or which the Other Party should reasonably understand to be necessary for the execution of the Contract are available in good time. The Other Party must also grant PSS access and all powers and authorisations necessary for the proper execution of the Order.
2. The Other Party is responsible for (the use of) the equipment and software in its organisation, as well as for control and security procedures and adequate system management.
3. If it has been agreed that the Other Party will provide software, materials or data on information carriers, these will meet the specifications necessary for the performance of the work.
4. PSS is not liable for damage, of whatever nature, as a result of PSS having relied on incorrect and/or incomplete data provided by the Other Party, unless this inaccuracy or incompleteness should have been apparent to PSS.
5. If the materials provided by the Other Party are protected by intellectual property, the Other Party guarantees that it has the required licences.
6. The Other Party must refrain from conduct which makes it impossible for PSS to properly execute the Order.
7. If work is carried out by PSS or third parties engaged by PSS in the context of the Order at the location of the Other Party or a location designated by the Other Party, the Other Party shall provide the facilities reasonably required at no cost.
8. If the Other Party has not complied with its obligations as set out in this article, PSS has the right to suspend the execution of the Contract and/or to charge the Other Party for the extra costs resulting from the delay in accordance with the usual price or rates.

## **7. Prices**

1. Unless expressly agreed otherwise in writing, the prices and rates indicated by PSS are always exclusive of VAT.
2. Prices and rates do not include shipping, travel, accommodation and other expenses, unless otherwise agreed.
3. If a rate has not been expressly agreed, the rate shall be determined on the basis of hours actually spent and PSS's usual rates.
4. PSS will inform the Other Party of all additional costs in good time before the conclusion of the Contract or provide information on the basis of which these costs can be passed on to the Other Party.
5. The agreed prices and rates for one Contract do not give rise to any claims regarding prices and rates for other Contracts. PSS explicitly reserves the right to increase prices and rates for subsequent Contracts.

## **8. Payment**

1. Payment shall be made by transfer to a bank account designated by PSS, unless otherwise agreed.
2. PSS shall send an invoice for the amount owed by the Other Party. The payment term of each invoice is 14 days from the date of the relevant invoice, unless otherwise indicated on the invoice or agreed otherwise.
3. Invoicing takes place monthly, unless otherwise agreed.
4. PSS and the Other Party may agree that payment will be made in instalments in proportion to the progress of the work. If payment in instalments has been agreed, the Other Party must pay according to the instalments and percentages as laid down in the Contract.
5. Objections to the amount of the invoice do not suspend the Other Party's payment obligation.
6. The Other Party is not authorised to deduct from the amount due any amount on account of a counterclaim asserted by it.
7. In the event of non-payment or late payment, the Other Party shall be in default by operation of law without notice of default. The Other Party shall then owe the statutory commercial interest from the date on which the payment became due until the day of payment in full, whereby interest on part of the month shall be calculated over an entire month.
8. A payment made by the Other Party shall first be applied to reduce all interest and costs due and finally to pay the longest outstanding invoices, even if the Other Party states that the payment relates to later invoices.
9. If the Other Party defaults or is in default in the (timely) fulfilment of its obligations, all reasonable costs incurred to obtain satisfaction out of court shall be borne by the Other Party.
10. In the event of bankruptcy, suspension of payments, liquidation, general attachment of assets, death or receivership, PSS's claims and the Other Party's obligations to PSS shall become immediately due and payable.
11. Any reasonable legal costs and execution costs incurred shall also be borne by the Other Party.

## **9. Complaints**

1. The Other Party must examine the Assignment at the time of execution, but in any case within 14 days of execution, whether the executed Assignment complies with the Agreement.
2. Complaints should be reported to PSS in writing within 14 days of the execution of the Order.
3. The right to (partial) restitution of the price, replacement or compensation shall lapse if the complaint is not reported within the stipulated period, unless a longer period results from the nature of the Order or from circumstances of the case.
4. The payment obligation shall not be suspended if the Other Party notifies PSS of the complaint within the specified period.

## **10. Delivery time**

1. If a deadline has been agreed or given for delivery, this deadline is only indicative and is never to be regarded as a strict deadline, unless expressly agreed in writing.
2. PSS shall not be liable in the event of harmful consequences for the Other Party due to the exceeding of delivery deadlines, unless there is intent or gross negligence on the part of PSS.
3. If PSS requires data, materials or instructions from the Other Party which are necessary for the delivery, the delivery time shall commence after the Other Party has provided them to PSS.
4. Agreed delivery deadlines shall not cause PSS to be in default by operation of law on their expiry. A further written notice of default shall be required in each case, whereby PSS shall be granted a period of at least 14 days to fulfil its obligations.
5. Notice of default is not required if delivery has become permanently impossible or it has otherwise become apparent that PSS will not fulfil its obligations under the Contract. If PSS still fails to deliver within this period, the Other Party has the right to dissolve the Contract in accordance with Article 265 Book 6 of the Dutch Civil Code.

## **11. Maintenance**

1. After delivery and acceptance by the Other Party, the Other Party may enter into a maintenance agreement. If the Other Party wishes maintenance to be carried out after delivery, PSS will apply separate prices and/or rates for this.
2. Both the Other Party and PSS have the right to terminate the maintenance agreement. The maintenance agreement may be terminated annually subject to a notice period of 2 months and must be in writing.
3. The charges related to such an agreement should always be paid for one year in advance.

## **12. Force majeure and unforeseen circumstances**

1. In the case of force majeure, which cannot be attributed to PSS or the Other Party, the parties are not obliged to fulfil the obligations arising from the Contract to the extent and for the time period that they are prevented to do so by the case of force majeure. This does not apply to outstanding payment obligations, which remain binding in any case as laid out in section 8.
2. In the General Terms and Conditions, force majeure means, in addition to what is understood in this respect in the law and jurisprudence, all external causes, foreseen or unforeseen, over which PSS cannot exercise any influence and which prevent PSS from fulfilling its obligations.
3. In any case, force majeure on the part of PSS means:
  - a. strikes;
  - b. traffic disruptions;
  - c. government measures preventing PSS from fulfilling its obligations on time or properly;
  - d. riots, uproar, war;
  - e. traffic restrictions;

- f. labour shortage;
- g. extreme weather conditions;
- h. fire;
- i. Import, export and/or transit bans; and/or
- j. any circumstance which impedes the normal course of business as a result of which fulfilment of the Contract by PSS cannot reasonably be required by the Other Party.

### **13. Termination of agreement**

1. The parties may terminate the Agreement at any time by mutual consent.
2. The parties may terminate the Agreement in writing with a notice period of 1 month.
3. If the Contract is dissolved, the claims of PSS against the Other Party shall become immediately due and payable. If PSS suspends fulfilment of its obligations, it shall retain its claims under the law and the Contract. PSS always retains the right to claim damages.

### **14. Liability**

1. PSS is liable only for direct damage caused by gross negligence or intent on the part of PSS, and not for more than the amount paid to PSS by the insurer or up to a maximum of once the amount stated in the relevant invoice.
2. Direct damage means exclusively:
  - a. reasonable costs to determine the cause and extent of the damage, insofar as the determination relates to damage within the meaning of the General Terms and Conditions;
  - b. reasonable costs incurred to have the defective performance of PSS comply with the Contract, insofar as they can be attributed to PSS; or
  - c. reasonable costs incurred to prevent or limit damage, insofar as the Other Party demonstrates that these costs have led to a limitation of direct damage as referred to in the General Terms and Conditions.
3. PSS is never liable for indirect damage, including consequential damage, loss of profit, missed savings, damage due to business stagnation, damage as a result of the provision of faulty cooperation and/or information by the Other Party, damage due to information or advice given without obligation by PSS, the content of which does not explicitly form part of the Contract and all damage which does not come under direct damage within the meaning of these general terms and conditions.
4. PSS shall never be liable for errors in the material provided by the Other Party or for misunderstandings or errors regarding the execution of the Contract if these have their origin or cause in acts of the Other Party, such as failure to provide complete, sound and clear data/materials on time or at all.
5. PSS shall never be liable for errors if the Other Party has given its approval at an earlier time or has been given the opportunity to carry out an inspection and has indicated that it does not require such an inspection.
6. The limitations of liability laid down in this article are also stipulated for the benefit of third parties engaged by PSS for the execution of the Contract.

7. PSS is not liable for damage or destruction of documents during transport or during shipment by post, regardless of whether the transport or shipment is made by or on behalf of PSS, the Other Party or third parties.

## **15. Secrecy**

1. Both parties are obliged to keep confidential all confidential information obtained from each other or from other sources in the context of the Agreement. Information is considered confidential if this has been communicated by the other party or results from the nature of the information. The party receiving confidential information shall only use it for the purpose for which it was provided.
2. If, on the grounds of a statutory provision or a judicial decision, PSS is required to disclose confidential information to third parties designated by the law or the competent court, and PSS is unable to invoke a legal right to refuse to give evidence or a right recognised or permitted by the competent court, PSS shall not be required to pay compensation or indemnification and the Other Party shall not be entitled to dissolve the Contract on the grounds of any damage resulting from this.
3. Without prejudice to the foregoing, PSS is authorised to include the name of the Other Party on a list of relations, which will be published on the website or in other communications to third parties, unless otherwise agreed.

## **16. Indemnity**

1. To the extent permitted by law, the Other Party shall indemnify PSS in respect of any liability to one or more third parties arising from and/or connected with the execution of the Contract, regardless of whether the damage was caused or inflicted by PSS or by its auxiliary person(s), auxiliary goods or Products or Services delivered or supplied.
2. In addition, the Other Party shall indemnify PSS to the extent permitted by law, against all claims of third parties in connection with any infringement of intellectual property rights of these third parties.
3. The Other Party is always obliged to make every effort to limit the damage.

## **17. Intellectual property**

1. All intellectual property rights to all products, materials, analyses, designs, sketches, software, equipment, documentation, advice, reports, (electronic) information as well as preparatory material thereof (collectively, the "**IP Material**") developed or made available within the scope of the execution of the Contract, shall be held exclusively by PSS or its licensors.
2. The Other Party only acquires any rights and powers in relation to the IP Material that arise from the Agreement and/or are expressly granted in writing.
3. The Other Party has an obligation of confidentiality, and is bound to treat confidentially, with regard to IP Material made available, given that it contains confidential information and trade secrets of PSS or its licensors.
4. The Other Party is not permitted to transfer any acquired right or authority relating to the IP Material to third parties except with PSS's prior written consent.

5. The Other Party is not allowed to remove or change any indication concerning intellectual property rights such as copyrights, trademark rights or trade names from the IP Material, unless otherwise agreed.
6. Subject to the General Terms and Conditions, the Other Party is entitled to correct errors in the IP material delivered, if this is necessary for the intended use thereof arising from the nature of the IP material. Errors are understood to mean failure to meet the functional specifications stated in writing by PSS and, in the case of custom-made software, the functional specifications expressly agreed. An error only exists if it can be demonstrated and reproduced. The Other Party is obliged to notify errors to PSS without delay.
7. Any exploitation, reproduction, use or disclosure by the Counterparty of the IP Material beyond the scope of the Contract or rights and authorisations granted shall be considered a violation of PSS's intellectual property rights.
8. There will be no infringement of intellectual property rights if the Other Party has received express written permission from PSS to exploit, reproduce, use or disclose the IP Material beyond the scope of the Contract or rights and powers granted.

## **18. Privacy**

1. PSS respects the privacy of the Other Party. PSS treats and processes all personal data provided to it in accordance with applicable legislation, in particular the General Data Protection Regulation. The Other Party consents to this processing. To protect the personal data of the Other Party, PSS employs appropriate security measures.
2. PSS uses the personal data of the Other Party exclusively in the context of the performance of the Contract or the handling of a complaint.

## **19. Due date**

For all claims and/or powers which the Other Party has against PSS and/or against any third parties engaged by PSS, a limitation period of one year from the time at which a fact occurs that the Other Party can exercise these rights and/or powers against PSS and/or any third parties engaged by PSS shall apply, in deviation from the statutory limitation periods.

## **20. Transfer**

1. The Other Party is not permitted to transfer rights and obligations arising from the Contract to third parties without obtaining the written consent of PSS.
2. PSS is entitled to attach conditions to this authorisation.

## **21. After-effects**

The provisions of the General Conditions and the Agreement, which it is expressly or by their nature intended to remain in force even after termination of this Agreement, shall thereafter remain in force and continue to bind both parties.



## **22. Other**

1. Any deviations from these General Terms and Conditions can only be agreed in writing. No rights may be derived from such deviations with regard to legal relationships entered into at a later date.
2. PSS's records shall, subject to proof to the contrary, serve as proof of the applications made by the Other Party. The Other Party acknowledges that electronic communications may serve as evidence.
3. If and to the extent that any provision of the General Terms and Conditions and the Contract is declared void or is annulled, the other provisions of these General Terms and Conditions and the Contract shall remain in full force and effect. PSS shall then adopt a new provision to replace the void/annulled provision, taking into account as far as possible the purport of the void/annulled provision.
4. The place of performance of the Contract shall be deemed to be the place where PSS is located.

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

1. All Agreements, the General Conditions, and all non-contractual rights and obligations arising therefrom, are governed in all respects by Dutch law, unless agreed upon contrarily in the Contract.
2. All disputes between PSS and the Other Party which may arise as a result of a Contract and/or the General Terms and Conditions, or of agreements resulting therefrom, shall in the first instance be settled by the competent court of The Hague District Court, unless agreed upon contrarily in the Contract.