

**GENERAL TERMS AND CONDITIONS OF  
PURCHASE FOR IT,  
OF B&S GROUP S.A. AND ITS  
AFFILIATED BUSINESSES**

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## **GENERAL TERMS AND CONDITIONS OF PURCHASE FOR IT, OF B&S GROUP S.A AND ITS AFFILIATED BUSINESSES**

### **GENERAL PROVISIONS**

The Standard Terms and Conditions of Purchase for IT, of B&S Group S.A. and its affiliated businesses, consist of these General Provisions and the Special Provisions. These General Provisions pertain to all IT agreements concluded by the Client. The Special Provisions pertain to specific IT agreements concluded by the Client.

#### **Article 1. Definitions**

For the purposes of these Standard Terms and Conditions, the following terms, when capitalised, have the following meaning:

- 1.1. Acceptance: the Client's approval of parts or all of the Performance.
- 1.2. Acceptance procedure: the procedure set out in the Agreement, which is used by the Client to assess whether he shall proceed with Acceptance of the Performance or not.
- 1.3. Delivery: the delivery by the Supplier of Products in the manner determined in the Agreement, demonstrated by a proof of receipt issued by the Client.
- 1.4. Specifications: the documents, including further notes and amendments, made available to the Supplier, which describe and explain the Client's organisation, the Performance and the use intended by the Client, and the tender procedure.
- 1.5. Annex: an appendix to the Agreement that forms part of the Agreement.
- 1.6. Source Code: the whole of software instructions in their original programming language, including the corresponding Documentation, intended to be executed by a computer, in such a form that a programmer with knowledge and experience of the used programming method and technique, will be able to change the software.
- 1.7. Documentation: every description of the Performance and its characteristics, whether or not specifically intended for its installation, Implementation, use, management and/or maintenance.
- 1.8. Strict Deadline: a term expressly agreed as such by the parties, and when this is exceeded by the party on which the term was imposed, this party shall be held in immediate default, in other words without requiring a notice of default.
- 1.9. Defect: every Fault and/or other malfunction as a result of which the Performance is not suitable for the Agreed Use.
- 1.10. User Rights: the right on the basis of which the Client is authorised to install and use Standard Software in accordance with the Agreed Use, including all reasonably necessary reproductions and publications, whether temporary or otherwise.
- 1.11. Implementation: all actions and measures required to make the Client's organisation suitable for the Agreed Use of the Product and/or Software.
- 1.12. Breach: is a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed.
- 1.13. Information Security: the required reliability of information systems in terms of confidentiality, uptime and integrity, as well as taking, maintaining and checking a cohesive package of corresponding measures.
- 1.14. Installation: the Supplier's placing and connecting of the Product and/or implementing Software.

- 1.15. Supplier: the Supplier with whom the Agreement was concluded.
- 1.16. Materials: all peripherals required for the installation, implementation, use and/or maintenance of the Performance, such as cables, smartcards and physical data carriers on which Software is supplied.
- 1.17. Additional Work: activities that are not included in the Order that lead to costs that exceed the Fee.
- 1.18. New Release: a next release of the Standard Software with predominantly new or amended functionalities, whether or not it is issued under another name.
- 1.19. Object Code: translation of the Source Code into a code that can be read and executed directly by a computer.
- 1.20. Maintenance: the activities to be performed by the Supplier focused on repairing and/or improving the Performance.
- 1.21. Order: the activities to be performed by the Supplier for the Client other than on the basis of an employment contract.
- 1.22. Client: the party for whose benefit the Agreement is concluded.
- 1.23. Supplier: the other party to the Agreement that has undertaken to implement the Order.
- 1.24. Completion: the Supplier offering parts or all of the Performance for Acceptance.
- 1.25. Agreed Use: the use of the Performance as intended by Client, as it is or reasonably should be known to the Supplier at the time of concluding the Agreement on the basis of the Specifications and/or on the basis of the information referred to in Article 4, insofar as such use is not expressly excluded or restricted in the Agreement.
- 1.26. Agreement: the agreements between the Client and the Supplier, of which the Terms and Conditions form part.
- 1.27. Patch: a correction of Standard Software intended to be temporary.
- 1.28. Personnel: personnel members and/or servants or agents engaged by the parties to implement the Agreement.
- 1.29. Performance: the Product to be supplied by the Supplier, the Order to be carried out or the User Right to be provided, or a combination thereof, including Materials and Documentation.
- 1.30. Product: the item supplied by the Supplier to the Client on the basis of the Agreement.
- 1.31. Software: the set of program lines to be supplied by the Supplier, as can be used, directly or indirectly, by a computer to achieve a certain result, to be described in more detail. Software can be distinguished into Standard or Custom Software.
- 1.32. Standard Software: Software developed for general use that is not made available exclusively to the Client.
- 1.33. Improved Release: a next release of the Standard Software in which Defects have been repaired and/or that has improved the operation in any other way.
- 1.34. Fee: the total price agreed for the Performance.
- 1.35. Terms and Conditions: these standard terms and conditions consisting of General Provisions and Special Provisions.
- 1.36. Working Days: calendar days, except weekends and official holidays within the meaning of Section 3 of the General Extension of Time Limits Act.

## **Article 2. Contact persons and escalation**

- 2.1. The parties shall each designate a contact person who maintains the contacts regarding the implementation of the Agreement. The parties shall inform each other of who they have designated as contact person.

- 2.2. Contact persons may only represent and bind the parties insofar as it concerns the implementation of the Agreement. They are not authorised to amend the Agreement.
- 2.3. Without prejudice to the provisions of Article 33, the parties have an internal escalation procedure or they ensure such a procedure is prepared.

### **Article 3. Status of notices**

Notices, including commitments or further agreements, by one party to the other that are important to implementing the Agreement, are only binding to the parties if they have been made or confirmed by an authorised person.

### **Article 4. Duty of investigation and information**

- 4.1. To determine the Client's intended use of the Performance, the Supplier has adequately informed himself of:
  - a. The Client's objectives in connection in relation to the Agreement;
  - b. The Client's organisation, insofar as it is important to the Agreement.
- 4.2. Whilst carrying out the duty of investigation and information of Article 4.1, the Supplier also formed an opinion on the feasibility of the Performance within the parameters set by the Client.
- 4.3. In view of the provisions of Article 4.1, the Client shall provide the Supplier with adequate information. Upon request, the Client shall provide the Supplier with additional information insofar as this is not of a confidential nature and should reasonably be deemed relevant to implementing the Agreement. In the event of any ambiguity, the Supplier shall ask the Client for clarification on time.
- 4.4. The parties shall inform each other of developments and changes that may be important to the implementation of the Agreement.

### **Article 5. Quality assurance, information provision, and audits**

- 5.1. Quality assurance is an aspect of the Supplier's quality management and forms part of the Agreement. In the context of quality assurance, the Supplier shall take measures that provide the Client with the confidence that the Agreed Use of the Performance can be achieved. The Supplier shall take these measures of his own volition.
- 5.2. At the Client's request, the Supplier shall make all the information available that is required to demonstrate that the obligations resulting from the Agreement are and will be met.
- 5.3. The Client may have an audit carried out if specific circumstances provide cause to do so. The Supplier shall cooperate with audits, including audits of the Supplier's personnel.
- 5.4. The parties bear their own costs they incur in connection with the information provision and audits referred to in this Article, including the costs of third parties they engage. Unless a shortcoming in compliance with the Agreement is observed at the Supplier, in which case the Supplier bears the costs of the audit.
- 5.5. The Client is always authorised to propose measures on the basis of information obtained pursuant to this Article. The Supplier is bound to implement those measures within reason.

### **Article 6. Delivery (Only applicable in the event of physical delivery of a product or products)**

- 6.1. The Supplier shall make one Delivery only.
- 6.2. On Delivery, the parties shall perform a visual inspection of the quantity and of damage that can be observed on the outside.

- 6.3. In the event of observed damage, the Client does not have to accept the Product. This does not prejudice the Supplier's obligation to make a Delivery on time.
- 6.4. The Client shall provide the Supplier with proof of receipt for the Products received. This proof is without prejudice to the Client's rights pursuant to the Agreement.
- 6.5. Where possible, the Supplier shall use sustainable packaging and shall ensure their environmentally friendly disposal.

#### **Article 7. Transfer of risk and ownership**

- 7.1. The risk of damage to or loss of Products that are the object of the Performance or will become part of the Performance transfers to the Client on Delivery.
- 7.2. Without prejudice to the provisions of Article 8, the ownership of parts or all of the Performance transfers to the Client on Acceptance.

#### **Article 8. Intellectual property rights**

- 8.1. All intellectual property rights regarding the Performance, wherever and whenever they may be exercised, rest with:
  - a. The Client insofar as it concerns a Performance that is or will be designed or produced specifically for the Client and/or under the leadership or supervision of the Client or that is designed or produced on the basis of his instructions or designs. Insofar as required, these rights are transferred by the Supplier to the Client on the basis of the Agreement, and said transfer is Accepted by the Client should the situation arise;
  - b. The Supplier or a third party in all other situations. In that situation the Supplier shall grant the Client a non-exclusive right, to be set out in an Agreement, to use the Performance that is in any case adequate to comply with the provisions of the Agreement or Agreements.
- 8.2. By signing the Agreement, the rights referred to in Article 8.1.a are transferred to the Client. Insofar as the transfer of those rights requires a deed at any time, the Supplier herewith authorises the Client to prepare such a deed should the situation arise and to sign this also on behalf of the Supplier, with due regard to the Supplier's obligation to cooperate with the transfer of these rights on the Client's demand without being able to impose conditions. Insofar as required, the Supplier authorises the Client to have the transfer of these intellectual property rights entered or transferred in the relevant registers.
- 8.3. In the event of a difference of opinion between the parties regarding intellectual property rights on parts or all of a Performance, it is assumed that those rights rest with the Client except for proof to the contrary. Irrespective of the outcome of that dispute, the Client may continue with the Agreed Use.
- 8.4. Herewith, insofar as required, the Supplier, also acting on behalf of his Personnel, waives any so-called personality rights within the meaning of Section 25.1 a to c of the Copyright Act, insofar as that regulation permits such a waiver. The Supplier guarantees to the Client that he is authorised to perform the waiver on behalf of his Personnel.
- 8.5. The Supplier indemnifies the Client against the claims of third parties regarding an alleged or actual breach of intellectual property rights of those third parties, including personality rights within the meaning of Section 25.1 of the Copyright Act, comparable claims regarding knowledge, unlawful competition, et cetera. On the Client's demand, the Supplier shall defend himself in any proceedings that may be instigated against the Client in connection with the Performance due to breach of the intellectual property rights of a third party.



- 8.6 In connection therewith, the Client shall inform the Supplier of such proceedings immediately and shall grant the Supplier the required powers of attorney and assistance. The Supplier also indemnifies the Client for all costs and damages which it may be ordered to pay in such proceedings and the costs of the proceedings itself, including but not limited to the costs associated with obtaining legal advice on the matter.
- 8.7 In the event of an alleged breach of the intellectual property rights of third parties, the Supplier shall take all measures, at his expense, that may contribute to preventing stagnation of the Client's business operations and to limit any costs and/or damage suffered by the Client as a result.
- 8.8 Without prejudice to the provisions of Articles 8.5 and 8.6, if third parties instigate proceedings against him regarding the breach of intellectual property rights, the Client may dissolve the Agreement in full or in part out of court, without prejudice to his other rights regarding the Supplier, including but not limited to any right to damages.
- 8.9 All the aids used for the Performance, including but not limited to user names, passwords, licences etc, are the Client's property and shall be provided by the Supplier to the Client on the Client's demand.
- 8.10 The Client is the owner, or the entitled party to, all the aids used for the Performance, including but not limited to user names, passwords, supporting licences.

#### **Article 9. Documentation**

- 9.1. The documentation is prepared in such a manner that the Performance can be used, managed and maintained properly on that basis by the Client and third parties.
- 9.2. Without being liable for any further fee, the Client may multiply, amend, and publish the Documentation for use in his organisation, provided any copyright marks etc are maintained.

#### **Article 10. Permits**

- 10.1. Insofar as the implementation of the Agreement requires a permit pursuant to any national or international regulations, the Supplier is responsible for obtaining and maintaining such a permit.
- 10.2. The Supplier shall inform the Client immediately of anything that he believes that does or may constitute a breach of the permit.

#### **Article 11. Acceptance**

- 11.1. The Client is not bound to make any payment to the Supplier before Acceptance took place. Payments that are made prior to the Acceptance are always made under the condition precedent of Acceptance.
- 11.2. Within 30 days of Completion or Delivery, the Client shall inform the Supplier as to whether he accepts the Performance. He may do so in a notice explicitly intended for that purpose or by sending the test report, as referred to in Article 59.3, if Custom Software is approved in that report.
- 11.3. Acceptance comprises the Documentation.
- 11.4. If the Client is unable to inform the Supplier as to whether he accepts the Performance within the term set out in Article 11.2, he shall report this to the Supplier prior to the expiry of that period, whilst stating reasons, and giving the period within which he shall inform the Supplier as to whether he shall accept the Performance.

- 11.5. In the absence of any notification, as referred to in Articles 11.2 or 11.4, and in the event an additional period for Acceptance, as referred to in Article 11.4, has expired without further notice from the Client, the Performance is deemed to have been accepted by the Client.
- 11.6. If the Client accepts the Performance despite the observed presence of one or more Defects, he informs the Supplier in the notice or in the test report referred to in Article 11.2. That Supplier shall repair those Defects with due regard to the provisions of Article 12.5.

## **Article 12. Guarantees**

- 12.1. The Supplier guarantees that he shall only use Personnel that has the agreed skills and qualifications or those required to undertake the Performance, taking account of the nature of the Performance to be provided and the manner in which the Supplier presented himself as an expert. He also guarantees that the Personnel used by him complies with the requirements that may be imposed on a comparable service provider as a reasonably competent and reasonably acting professional.
- 12.2. The Supplier guarantees that he shall not make Personnel available to the Client or have Personnel work on this that also works for third parties if this could produce a conflict of interest for said Personnel.
- 12.3. For a period of twelve months following Acceptance, the Supplier guarantees that he shall repair Defects free of charge at his expense. If the Client wishes to invoke this guarantee, he shall inform the Supplier in writing and by telephone in emergencies. The Supplier shall repair the Defects immediately, taking account of their nature and seriousness. When required, repair takes place in consultation with the Client.
- 12.4. If the Supplier produces a temporary solution to implement the guarantee, as referred to in Article 12.3, he shall reimburse the Client for the resulting damage suffered by the Client. Article 26 applies by analogy.
- 12.5. In addition to Article 12.3, the Supplier guarantees that he shall repair Defects the Client observed during the Acceptance Procedure, but that did not constitute reasons not to proceed with Acceptance, with due urgency.
- 12.6. The Supplier guarantees that he shall maintain the Performance up to 5 years from the date of Acceptance, of which at least 3 years in the manner determined in the Special Maintenance Provisions.
- 12.7. The Supplier guarantees that he does not and shall not receive any other fees (kickback fees, activities or other indirect contributions) in any form during the implementation of the Performance, or related to that, from a third party, or shall only receive those with permission from the Client. If the Supplier or his Personnel are entitled to the aforementioned fee, they shall report this immediately to the Client, whereby the Client shall deduct the fee to be received from the fees to be received by the Supplier. As proof of the received fee, the Supplier shall submit a monthly itemisation of the received fee.
- 12.8. The Supplier guarantees that on the Client's first demand, he shall transfer all the required aids, including but not limited to user names, passwords, required licences, etc immediately (within 60 minutes) to the client without charging costs.

## **Article 13. Support and Maintenance**

- 13.1. On request, the Supplier familiarises the Client and his Personnel with the use of the Performance. If the Supplier was also charged with Implementing the Performance, in principle that support is provided by the Personnel that was involved.

- 13.2. The nature, extent, duration and, if applicable, the costs of support are set out separately in the Agreement.
- 13.3. If the Client so requires, the Supplier shall maintain the Performance with due regard to the provisions of Article 12.6.

#### **Article 14. Invoicing, discount, and Additional Work**

- 14.1. The Supplier invoices in the manner prescribed by the Agreement.
- 14.2. The Supplier sends an electronic invoice with due regard to the specifications provided by the Client, so that this can be received and processed electronically.
- 14.3. An agreed discount on the Fee or penalty is payable to the Client, without prejudice to his other rights or claims, including but not limited to:
  - a. His claim to comply with the agreed obligation to carry out the Performance;
  - b. His right to damages and/or;
  - c. His right to dissolution.
- 14.4. Additional work is reported to the Client on time, is always invoiced separately, and is not liable for payment other than following consent from the Client.

#### **Article 15. Payment and audit**

- 15.1. The Client shall pay the amounts payable to the Supplier on the basis of the Agreement no later than 30 days from receipt of the invoice, provided this complies with the provisions of Article 14.1. The period of 30 days starts from the date of receipt of the invoice or, if the date of Acceptance is later, as of that date.
- 15.2. The Client may have the content of an invoice sent by the Supplier checked for accuracy by an auditor appointed by him within the meaning of Section 2:393 (1) of the Netherlands Civil Code. The Supplier shall grant this auditor access to books and documents and shall provide him with all the details and information he requires. The audit is confidential and does not go beyond what is required to verify the invoice. The auditor shall issue his report to both parties with due urgency. The costs of the audit shall be borne by the Client, unless the auditor's audit demonstrates that the invoice is incorrect or incomplete, in which case the costs of the audit are at the Supplier's expense.
- 15.3. During the period of the audit, the Client may suspend the payment of an invoice or of the part on which the parties do not agree. The Client shall only use this authority if he has reasonable doubt regarding the accuracy of the invoice in question.
- 15.4. In the event of partial or full non-payment by the Client of an invoice because he believes the invoice to be incorrect or the Performance to be unfit for purpose, the Supplier is not entitled to suspend or end the activities.

#### **Article 16. Confidentiality**

- 16.1. The parties shall not disclose anything they cognisance of during the implementation of the Agreement, and of which they know or reasonably should suspect its confidential nature, in any way except insofar as any statutory requirement, supervisory body or a court judgment obliges them to disclosure. In this context a court judgment is deemed to be the equivalent of a judgment by a body that is authorised to settle the dispute pursuant to Article 33.1, if the parties have agreed another form for dispute settlement.
- 16.2. The parties obliged their Personnel to comply with the duty of confidentiality included in Article 16.1.

- 16.3. At the Client's request, the Supplier shall cooperate with supervision being exercised by or on behalf of the Client of the storage and use of confidential information by the Supplier.
- 16.4. The Supplier shall make all the data it has in the framework of implementing the Agreement, including any copies, available to the Client on demand.
- 16.5. The parties shall treat the content of this agreement and all other resulting agreements/orders, and all the information that is provided by the other party under this agreement and/or another resulting agreement to it, and all the other information regarding the business operations of the other party, as strictly confidential and shall keep it confidential. Confidential information includes in any case all the information that qualifies as inside information as defined in Article 7 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation (MAR)), including in any case the fact that there is a potential or actual cooperation or business relation. Each party recognises the specific interest of not disclosing confidential information due to the fact that B&S Group S.A., of which the Client forms part, is a listed company. Every party guarantees that it and its group companies have not acted and will not act in breach of the MAR. This duty of confidentiality shall also continue to exist after terminating the agreement.
- 16.6. The party that breaches the duty of confidentiality included in this Article, is liable to pay the other party an immediately due and payable penalty of € 100,000,- per breach.

**Article 17. Processing data**

- 17.1. Without prejudice to the provisions of this Article and Article 8, the Supplier shall only use the data provided by the Client, and the data generated on the basis on the instructions of the client, to carry out the Performance, and insofar as this use is essential and proportional to this Performance, unless there are statutory requirements to the contrary.
- 17.2. Insofar as the Supplier processes data in the context of the Agreement on behalf of the Client, he shall comply with the applicable legislation and regulations in the area of personal-data protection. Should the situation arise, the Supplier processes personal data only on the instruction and on the basis of written instructions from the Client, unless there are statutory requirements to the contrary.
- 17.3. Insofar as the Supplier can be qualified as processor in the context of implementing the Agreement, the Client's Data-Processing Agreement shall apply and shall be signed by the parties.
- 17.4. The parties involve each other in defending claims by third parties in connection with personal-data processing in the context of the Agreement.

**Article 18. Security procedures and information security**

- 18.1. Insofar as the Performance is carried out at the Client, the Supplier shall instruct its Personnel to comply with the security procedures and house rules of the Client.
- 18.2. The Client may require the Supplier's Personnel to submit a Certificate of Good Conduct/Criminal Records Check no later than three Working Days before the start of the activities.
- 18.3. The Client may subject the Supplier's Personnel that is or will be used to implement the Agreement to a security check pursuant to the Client's customary rules. The Supplier shall grant full cooperation with that check. On the basis of the outcomes, the Client may refuse the use of the personnel member in question for the implementation of the Agreement.

- 18.4. The Supplier shall report the arrival of his Personnel at the site of the Client to the contact person of the Client on time. The Supplier ensures that his Personnel can identify itself at the Client's request and can prove that it works for or on behalf of the Supplier. The Client may refuse anyone access to one of his sites.
- 18.5. If a person who belonged or belongs to the Supplier's Personnel and who visits the Client's sites in that capacity, no longer is or will be employed by the Supplier for whichever reason, the Supplier shall report this immediately to the Client's contact person.
- 18.6. The Information Security specified by the Client is without prejudice to the Supplier ensuring a level of Information Security that may be expected from a competent IT supplier acting reasonably.
- 18.7. Supplier will ensure appropriate technical and organisational measures to ensure a level of security appropriate with the Performance during the term of the Agreement and/or for as long as Supplier processes Client's data, whichever term is longer. Such measures will at least mean keeping an ISO 27001 certification during the term of the Agreement and/or for as long as Supplier processes Client's data, as well as keeping in place other measures as specified in the relevant agreement regarding the processing of data.
- 18.8. The Supplier shall end Breaches as soon as possible. Without prejudice to the aforementioned, the Supplier shall inform the Client as soon as the Supplier has taken cognisance of a (potential) Breach.
- 18.9. Even after a notification on the basis of the previous paragraph, the Supplier shall inform the Client of the developments regarding the Breach, including the measures he takes to resolve the Breach and to prevent it in the future.
- 18.10. The Supplier shall leave the Client to report to the supervisory bodies and competent authorities, unless there are statutory obligations to the contrary.  
The Supplier grants all the required cooperation to providing additional information to the supervisory bodies, competent authorities and data subjects concerned on time. The parties shall each bear their own costs associated with reports to the supervisory bodies, competent authorities and data subjects.

#### **Article 19. Mentions in publications and/or advertising**

Except with consent from the Client, the Supplier shall not make mention, including but not limited to in publications, including press releases, advertising, either implicitly or explicitly of the relationship or the Performance and shall not use the name of the Client as reference.

#### **Article 20. Substitution of Supplier's Personnel**

- 20.1. The Supplier shall only substitute Personnel with prior permission from the Client.
- 20.2. The Client may require substitution of Personnel if he no longer deems their use desirable for reasons associated with the person.
- 20.3. When the Supplier's Personnel is substituted, the Client shall not be charged for corresponding costs.
- 20.4. When Personnel is substituted, the Supplier shall make Personnel available at the same rate that is at least equal in terms of expertise, education and experience to the original Personnel or that complies with the parties' agreements on the matter.

#### **Article 21. Subcontracting**

- 21.1. On implementing the Agreement, the Supplier may only use the services of third parties with prior permission from the Client.

- 21.2. The Client's permission is without prejudice to the Supplier's own responsibility and liability for compliance with his obligations pursuant to the Agreement, and for his obligations as employer pursuant to tax, healthcare insurance and social-security legislation.
- 21.3. The Supplier cannot derive any authority from the Agreement to act on behalf of the Client or his parent company/subsidiaries. The Client is not bound in any way by a commitment/order made by the Supplier to any third party, unless this was confirmed expressly by the Client.

#### **Article 22. Transfer of rights and obligations**

- 22.1. The Supplier shall not transfer the rights and obligations resulting from the Agreement to a third party without the Client's permission.

#### **Article 23. Impending delay**

- 23.1. If the implementation of the Performance is in danger of suffering a delay, the Supplier shall inform the Client immediately, whilst stating the cause and its consequences. The Supplier shall also propose measures to the Client to prevent any delays or further delays.
- 23.2. As soon as possible following receipt of the notice referred to in Article 23.1, the Client shall inform the Supplier as to whether he agrees to the proposed measures or not. Consent does not mean that the Client acknowledges the cause of the impending delay and is without prejudice to his rights in respect of the Supplier.

#### **Article 24. Liability**

- 24.1. The Supplier is liable for all damage and costs, including operating and other indirect damage, including loss of profit, that is caused by Defects or other shortcomings, attributable or otherwise, of the Supplier and/or his Personnel.
- 24.2. The Supplier indemnifies the Client for all claims by third parties for which he is liable, of whichever name.
- 24.3. The Supplier shall insure his liability, as described in this Article, for an adequate sum and shall provide the Client access, if required, to the documents pertaining to the insurance, including the policy document and the premium-payment methods.

#### **Article 25. Force Majeure**

- 25.1. A shortcoming in complying with the Agreement that is not attributable to the guilt of a party nor is at its expense pursuant to the law, legal acts or general opinion, produces force majeure.
- 25.2. Force majeure on the part of the Supplier does in any case not include: lack of Personnel, strikes, sickness of Personnel, late delivery or unsuitability of goods required to carry out the Performance, or liquidity or solvency issues.
- 25.3. If, in respect of a shortcoming as referred to in Article 25.1, the Supplier can claim any benefit that he would not have had in case of due compliance, the Supplier shall compensate the damage suffered by the Client due to that shortcoming to maximum the value of the benefit referred to in the previous full sentence.

#### **Article 26. Defects in the interface with other software or equipment**

- 26.1. At the request of the Client, the Supplier takes part in a meeting with other parties and/or suppliers of the Client designated by the Client, if it becomes apparent at any time that the

Performance does not work well in conjunction with other software and/or products in use by or that will be taken in use by the Client.

- 26.2. The meeting, as referred to in Article 26.1, is aimed at tracing the cause of the lack of performance in conjunction and in possibly finding a solution and shall be determined within a period of no more than one month. The reasonable costs associated with the meeting and working out a solution are at the Client's expense, unless the inadequate operation in conjunction proves to be attributable to the Supplier.

## **Article 27. Dissolution and termination**

- 27.1. Without prejudice to what is set out in the Agreement, each of the parties may dissolve the Agreement out of court, in full or in part, in writing, unless the shortcoming, in view of its special nature or minor importance, does not justify this dissolution and its consequences. Insofar as compliance is temporarily or permanently impossible, the authority to dissolve only arises when the debtor is in default.
- 27.2. In the event of force majeure, the parties do not proceed with dissolution before expiry of a term of 15 Working Days, to be calculated from the date on which the circumstance that produces the force majeure arose.
- 27.3. Without a prior reminder or notice of default, the Client can dissolve the Agreement in writing out of court with immediate effect, if the Supplier applies for a temporary judicial settlement, the Supplier applies for bankruptcy or is declared bankrupt, the Supplier's business is dissolved, the Supplier ceases his business, there is a drastic change in the control over the activities of the Supplier's business, a significant part of the Supplier's assets is attached or the Supplier should be deemed unable to comply with the obligations of the Agreement in any other way.
- 27.4. If the Client concluded two or more associated Agreements with the Supplier, in the situations referred to in Articles 27.1 and 27.3, the Client may also dissolve the other Agreements in the manner indicated. Associated as aforementioned should be demonstrated by the corresponding Agreements.
- 27.5. Without prejudice to the provisions of the Agreement or the Terms and Conditions, the Client may also terminate an Agreement in writing, possibly also with immediate effect. In that case, there shall be a settlement between the Client and the Supplier on the basis of the provisions of Articles 27.6 to 27.8. This settlement method shall never lead to the Client being liable to pay the Supplier more than the Fee or the outstanding part thereof. The Client is not obliged to indemnify the Supplier in any other way for the consequences of termination of the Order other than as provided for in paragraphs 6 to 8 of this Article.
- 27.6. In the event of interim termination of Orders with a one-off nature or with a fixed term where the Fee is paid in function of completion or expiry of that time, on termination by the Client, the provisions of Article 27.5 confer the Supplier entitlement to part of the Fee to be determined in reason by the Client. When this is determined, this shall take account of the activities already performed by the Supplier, the benefit enjoyed already by the Client, and the basis on which the Order was terminated. The Supplier is only entitled to the full Fee if the end of the Order is attributable to the Client and payment of the full Fee is reasonable in view of the circumstances.
- 27.7. In the event of premature termination of the other Agreements on the basis of the provisions of Article 27.5, there shall be a settlement between the Client and the Supplier on the basis of (a) the part of the Fee that pertains to the part of the Performance that Supplier already



carried out to implement the Agreement at the time of termination, (b) other obligations the Supplier already entered into to implement the Agreement, insofar as this cannot be limited.

27.8. If an Agreement consists of an Order and of other Performances, the provisions of Articles 27.6 and 27.7 apply to the relevant parts of the Agreement.

#### **Article 28. Retaining the right to claim compliance**

The Client's failure to claim compliance with any provision within a period set out in the Agreement, does not affect the right to claim compliance after all, unless the Client consented expressly in writing to the non-compliance.

#### **Article 29. Exit clause**

- 29.1. If the Agreement ends prematurely or otherwise for whichever reason, the Supplier shall do what is reasonably required at the Client's demand to ensure that a new Supplier (transition), or Client itself (retransition), can take over the implementation of the Agreement without impediments and/or carry out a similar Performance for the Client. If necessary, the Supplier shall take part in a meeting with the subsequent Supplier at the Client's request.
- 29.2. The Supplier shall provide the services referred to in Article 29.1 free of charge.
- 29.3. After expiry of the Agreement, the Supplier shall return or destroy, at the Client's choice, all the documents, books, papers and other matters, including data carriers, immediately. The Supplier shall inform the Client if he holds the opinion that statutory requirements impede the destruction.
- 29.4. After expiry of the Agreement, the Supplier returns or deletes, at the Client's choice, all the data provided by, and data generated on the basis thereof on the instructions of the Client, including personal data. As of the time determined by the Client and, if applicable, not before their return, the Supplier ensures that these data are deleted from its systems and the systems of its subcontractors, including removing any copies. The Supplier shall inform the Client if he holds the opinion that statutory requirements impede the immediate deletion.
- 29.5. During the transition or retransition, the Supplier guarantees to keep the data referred to in paragraph 4 available for unrestricted inspection by the Client to the time these data have been returned to the Client or were deleted following agreement with the Client.

#### **Article 30. Continuing obligations**

Termination of the Agreement does not discharge the parties from the obligations that continue due to their nature. These obligations include in any case indemnity for a breach of intellectual property rights, guarantees, liability, confidentiality, disputes and applicable law.

#### **Article 31. Continuation order**

The Supplier cannot derive any rights to obtaining a continuation order from the Agreement.

#### **Article 32. Void and invalid provisions**

If one or more provisions of the Agreement prove to be invalid or are voided by the court, the other provisions of the Agreement remain in force insofar as possible. The parties shall consult each other on the clauses that are invalid or voided in order to make alternative arrangements. The aim and purport of the Agreement shall not be affected.



**Article 33. Other provisions**

- 33.1. Considering that every employee of the Client has taken cognisance of the Client's business secrets in the widest sense of the word - including knowledge of the network of purchase and sales channels built up by the Client, knowledge of the business model of marketing, distribution, customs and financing systems of the Client -, the Contractor is prohibited from employing or having an employee work, either directly or indirectly, on the basis of an employment contract or otherwise, irrespective of whether the employee receives a fee, or to encourage them to do so, unless the Client grants prior written permission. The Contractor is aware that every employee of the Client has agreed a non-compete and non-solicitation clause.
- 33.2. Every dispute between the parties regarding the Agreement is solely and exclusively put before the competent court in the subdistrict of Rotterdam, unless the parties agree another form of dispute settlement.
- 33.3 The Agreement is governed by the laws of the Netherlands, expressly excluding the rules of international private law, including the Vienna Sales Convention.
- 33.4 If the Contractor resides/has offices in a country outside the European Union, with which country there is no treaty to enforce Dutch judgements, all disputes concerning the Agreement, and all other resulting agreements, shall, at variance with Article 33.2, be settled solely and exclusively by means of arbitration in accordance with the Arbitration Regulations of the Netherlands Arbitration Institute (NAI). In that case, arbitration shall take place in Rotterdam, in the Dutch language, and the arbitration tribunal shall consist of one or three arbitrators at the discretion of the Client.

## **GENERAL TERMS AND CONDITIONS OF PURCHASE FOR IT, OF B&S GROUP S.A AND ITS AFFILIATED BUSINESSES**

### **SPECIAL USER RIGHTS PROVISIONS**

The provisions of this special part apply together with the General Provisions if the Client acquires User Rights.

#### **Article 34. Additional definitions of terms**

In addition to Article 1, the following terms, when capitalised, shall be understood to mean:

- 34.1. Installation Copy: a data carrier with the Standard Software for which the User Rights are granted.
- 34.2. Entitled Party: the party that holds the intellectual property rights on the Standard Software.

#### **Article 35. Nature and content of the User Rights**

- 35.1. With due regard to the Terms and Conditions, the Supplier grants the Client irrevocable User Rights to the Standard Software and to any New Releases if the Client is entitled to receive those. The User Rights do not include transfer by the Supplier to the Client of patent, copyright or brand rights to the Standard Software in question.
- 35.2. Without the Client being liable to pay any additional fee, the User Rights include in any case:
  - a. The right to use the functionalities of the Standard Software that are accessible by the Client and those that are not included in the Documentation;
  - b. The right to produce copies of the Standard Software, to store them, to test them regularly, and to keep them on "hot standby" in the event of an emergency;
  - c. The right to use the Standard Software for test and development purposes;
  - d. The right to use the Standard Software without any restriction or limitation with regards to the place, equipment or in any other way, including the use by third parties for the benefit of the Client.
- 35.3 The Client may make and take in use copies of the Standard Software as often as he deems necessary for his business operations. When he proceeds to do so and therefore is liable to pay the Supplier an additional payment, he shall inform the Supplier with due urgency. The Client shall not remove any markings of property and copyrights when the Standard Software is multiplied.
- 35.4 To the time of the Acceptance of the Standard Software, the Client obtains a non-exclusive right from the Supplier to use it for installation and test purposes.
- 35.5 If the Supplier only repairs Defects in the Standard Software by issuing Patches or Improved Releases, the Client is entitled to free receipt and use thereof during the guarantee period of Article 12.3, even if he did not agree Maintenance with the Supplier.

#### **Article 36. Guarantees**

In addition to Article 12, the Supplier guarantees that:

- a. The Standard Software does not contain any technical facilities, functions or other strange elements that could impede the Agreed Use at any time, temporarily or otherwise;

- b. If he is not the Entitled Party to the Standard Software, he has been authorised by the Entitled Party to grant these User Rights to third parties on its behalf. Upon request, the Supplier shall provide the Client with a copy of that authorisation.

**Article 37. Issuing an Installation Copy**

- 37.1. Where possible, the Supplier shall provide the Client with an Installation Copy or shall enable the Client to produce one. Its price is included in the Fee.
- 37.2. If the Client is entitled to receive New Releases, the provisions of Article 37.1 apply to those too.
- 37.3. If the Installation Copy became unusable or damaged to such an extent that the Agreed Use is no longer possible, the Supplier shall provide the Client with a new Installation Copy of the originally supplied version and the Improved and New Releases taken into use by the Client on request and with due urgency or shall enable the Client to make those copies himself. Insofar as applicable, the Supplier is only entitled to reimbursement of the cost price of the materials of the Installation Copy.

**Article 38. Conversion into other User Rights**

- 38.1. If the Supplier wishes to convert the User Rights granted to the Client into other User Rights in respect of the Standard Software at any time, he shall consult the Client on that conversion and on any conversion ratio to be applied in advance. Such a conversion shall not produce adverse consequences of whichever nature for the Client.
- 38.2. If the parties cannot reach agreement during the consultation referred to in Article 38.1, the Client may continue to exercise his User Rights in full.

## **GENERAL TERMS AND CONDITIONS OF PURCHASE FOR IT, OF B&S GROUP S.A AND ITS AFFILIATED BUSINESSES**

### **SPECIAL ORDER PROVISIONS**

The provisions of this special part always apply together with the Standard Provisions, if the Supplier carries out services for the Client, such as consultancy services, developing Custom Software, leading IT projects, dealing with the management and operation of an IT infrastructure, network and workstation services or Secondment.

### ***ORDERS GENERAL***

#### **Article 39. Additional definitions of terms**

In addition to Article 1, the following terms, when capitalised, shall be understood to mean:

- 39.1. Secondment: the Supplier making available Personnel to the Client to carry out activities under the leadership and supervision of the Client.
- 39.2. Custom Software: Software developed or to be developed specifically for the Client or amendments to the Standard Software specifically for the Client.

#### **Article 40. Place and times of activities**

The activities shall be carried out at a time and place determined in the Agreement. The Client may change the place where the activities are carried out, provided he informs the Supplier no later than 3 Working Days before the change becomes effective. If a change leads to proven higher costs for the Supplier, the Client shall compensate those costs. Conversely, the Client is entitled to a corresponding reduction of the Fee in the event of lower costs.

#### **Article 41. Use of specific Personnel**

If the Client concluded the Agreement in view of it being implemented by one or more specific persons, the Supplier shall ensure that those persons shall indeed be and remain charged with the implementation.

#### **Article 42. Progress report and work meeting**

- 42.1. The Supplier reports to the Client about the progress of his activities in the manner determined in the Agreement. He provides insight into the progress and state of his activities, the number of hours spent on the Order up to that time and other aspects relevant to the implementation.
- 42.2. The parties meet as often as one of them deems necessary to the progress of the activities.

## ***ORDERS SPECIFIC***

### ***CONSULTANCY SERVICES***

#### **Article 43. Daily leadership and supervision**

The daily leadership and supervision of the implementation of the Order rest with the Supplier.

#### **Article 44. Project leaders**

The parties may each appoint a project leader, whose powers, tasks, and responsibilities are set out in the Agreement.

#### **Article 45. Project phasing**

In the event of project phasing, the various project phases are identified in the Agreement. It notes which activities form part of the individual phases, which activities have strict deadlines, which outcome they should produce, and when and how they are closed.

### ***DEVELOPING CUSTOM SOFTWARE***

#### **Article 46. Leadership and supervision, appointing project leaders and project phasing**

In case of developing Custom Software, Articles 49 and 50 apply by analogy.

#### **Article 47. Completing Custom Software**

The order to develop Custom Software comprises its Completion.  
Completion is in Source Code and Object Code.

#### **Article 48. Acceptance procedure Custom Software**

- 48.1. Without prejudice to the provisions of Article 11, Acceptance of Custom Software takes place as follows.
- 48.2. The Supplier shall inform the Client of the Completion of the Custom Software on time.
- 48.3. If the Client carries out an acceptance test, or has one carried out, he shall prepare a test report as soon as possible and shall send a signed report to the Supplier. The test report records the observed Defects and whether the Client approves or rejects the Custom Software.
- 48.4. If the Client approves the Custom Software, the date of signing the test report is deemed to be date of Acceptance.
- 48.5. If the Client does not approve the Custom Software during the first acceptance test, he shall repeat this test in full or in part within a reasonable period to be determined by the Client. In an additional test report, the Client shall record whether the Defects observed during the first test were remedied and whether he now does accept the Custom Software.
- 48.6. If the Client rejects the Custom Software, the Supplier shall repair the observed Defects at his own expense within a reasonable period granted by the Client, which commences on the date of signing the test report. If the Supplier does not comply, the Client may remedy the Defects himself or have them repaired by a third party, after having informed the Supplier.

In that case, the Supplier shall grant full cooperation free of charge by providing the necessary information to the Client on demand. If the Client repairs a Defect or has one repaired by a third party for the aforementioned reason, this is without prejudice to the agreed responsibilities of the Supplier for the Custom Software.

- 48.7. If the Client rejects the Custom Software again after the second acceptance test, the Supplier is in default as a result. In that case, the Client may dissolve the Agreement out of court with immediate effect without requiring any reminder or notice of default.
- 48.8. The provisions of Article 48 are without prejudice to the other provisions, which means the Client is not bound to complete the procedure of Article 48 if the Supplier is in default on other grounds.

#### **Article 49. Maintenance Custom Software**

- 49.1. If the Client maintains the Custom Software himself or has it maintained by a third party, the Supplier shall support him at his request for a competitive fee. On request, the Supplier shall provide the required additional information to the Client or to the third party he engaged. The aforementioned also applies to management activities regarding the Custom Software that are either carried out by the Client or by a third party.
- 49.2. If the Client also agreed Maintenance with the Supplier, the relevant provisions in the Agreement apply.

## **GENERAL TERMS AND CONDITIONS OF PURCHASE FOR IT, OF B&S GROUP S.A AND ITS AFFILIATED BUSINESSES**

### ***SPECIAL MAINTENANCE PROVISIONS***

The provisions of this special part apply together with the General Provisions if the Client agrees Maintenance with the Supplier.

### **MAINTENANCE GENERAL**

#### **Article 50. Additional definitions of terms**

In addition to Article 1, the following terms, when capitalised, shall be understood to mean:

- 50.1. Uptime: the period the Performance is free from Defects.
- 50.2. Corrective Maintenance: the Supplier tracing and repairing Faults, which were reported to him by the Client or which the Supplier took cognisance of in any other way.
- 50.3. Function Repair Time: the period, expressed in Service Hours, between the time a Fault is reported to the Supplier and the time it is resolved.
- 50.4. Innovative Maintenance: the Supplier making New Release or new developed elements of Products and/or new Documentation available to the Client.
- 50.5. Preventive Maintenance: the Supplier taking measures to prevent Faults and other associated forms of service provision.
- 50.6. Response Time: the time within which the Supplier's Personnel responds adequately to a Fault or other service requests of the Client.
- 50.7. Service Levels: requirements agreed in the Agreement in respect of maintenance and other agreed forms of services.
- 50.8. Service Hours: hours that fall within the agreed service period.
- 50.9. Fault: a technical problem that occurs when the Performance is used.

#### **Article 51. Maintenance on previously undertaken Performances**

Even when the Client agrees Maintenance with the Supplier at a later date in respect of a Performance carried out by the Supplier for the Client, this shall be governed by these Special Provisions.

#### **Article 52. Commencement time of Maintenance**

The Supplier provides Maintenance as of the time determined in the Agreement.

#### **Article 53. Time and place of carrying out Maintenance**

- 53.1. The Supplier carries out Maintenance on site or from his site. The Supplier only carries out Maintenance on the Client's site if this is reasonably necessary.
- 53.2. In principle, maintenance that may lead to a disruption of the Client's work process shall be carried out outside the Client's usual working hours.
- 53.3. If disruption of the work process, as referred to in Article 53.2, cannot be avoided in view of the importance of immediate repair of the Fault, the Supplier shall inform the Client on time before he starts with the Maintenance.

**Article 54. Progress report and work meeting**

- 54.1. The Supplier reports to the Client about the progress of his activities in the manner determined in the Agreement. He shall provide insight into the progress and state of his activities, the number of hours spent, and other aspects relevant to the implementation.
- 54.2. The parties meet as often as one of them deems necessary to the progress of the activities.
- 54.3. The Supplier ensures adequate records and archives of the causes of Faults and the results of Maintenance and, if required, for the amendment to the Documentation.

**Article 55. Corrective Maintenance and temporary solutions**

- 55.1. Maintenance consists at least of Corrective Maintenance.
- 55.2. The guarantee of Article 12.6 that the Supplier shall be able to maintain the Performance for at least three years following Acceptance in accordance with these provisions, applies to Corrective Maintenance in full if the Client does not wish to proceed with taking New Releases or the latest models of a Product.
- 55.3. The Supplier only applies a temporary solution with permission from the Client. Unless the parties reach a different agreement in a specific situation, the Supplier replaces a temporary solution with a definitive solution as soon as possible.

**Article 56. Preventive Maintenance**

As part of Preventive Maintenance, the Supplier shall check the Performance regularly and at least once a year for its proper operation.

**Article 57. Reporting, cancelling and prioritising Faults**

- 57.1. The Client shall report Faults in the manner prescribed in the Agreement.
- 57.2. When a Fault is reported, the Client determines the level of priority to be awarded in accordance with the provisions of the Maintenance Agreement.
- 57.3. The Supplier's response to a notification as referred to in Article 57.1, is always focused on removing the Fault as soon as possible, whether or not by using a temporary solution.

**Article 58. Compliance with Service Levels**

- 58.1. The Supplier shall make every possible effort to achieve the Service Levels. The consequences of them not being achieved are set out in the Agreement. The provisions of Article 13.3 shall apply by analogy. The Agreement can in any case be dissolved in the event of repeatedly failing to meet the Service Levels.
- 58.2. At variance with the provisions of Article 58.1, the Function Repair Times and the Response Times are Strict Deadlines. When the agreed Uptime is not achieved, the Supplier is immediately in default without requiring a notice of default.
- 58.3. Service Levels do not prejudice the other provisions of the Agreement.

**Article 59. Maintenance by others than the Supplier**

During the term of the Agreement in question, the Client can only have the Maintenance he agreed with the Supplier carried out by third parties with retention of rights if the Supplier failed to comply



with obligations resulting from the Agreement or if he received permission to do so from the Supplier.

**Article 60. Test results Maintenance**

The Client may test or have a test performed to check a Fault has actually been resolved. The Supplier is obliged to cooperate. If the test demonstrates that a Fault has not been resolved properly, the Client may recover the costs of the test from the Supplier.

## *SOFTWARE*

### **Article 61. Extent of Maintenance**

In addition to the other provisions, Maintenance of Software consists of Corrective and Preventive Maintenance and support. If the Client requires, Software Maintenance also includes Innovative Maintenance.

### **Article 62. Support**

- 62.1. In addition to the provisions of Article 13, the Supplier provides the Client support at his request in form of advice on the use and operation of the Software.
- 62.2. The Client may ask the Supplier for support at the times included in the Maintenance Agreement.
- 62.3. When the Client asks for support, as referred to in Article 62.2, the Supplier shall bring about contact between a software specialist and the Client as soon as possible and, if applicable, within the Response Time.

### **Article 63. Improved and New Releases**

- 63.1. The Supplier ensures a consistent release policy. The principle is that Improved and New Releases are made available on time. Accordingly, the Supplier shall study the need to issue such releases on a regular basis and shall inform the Client of the outcomes of his studies as soon as possible.
- 63.2. Interim changes to Software due to Corrective Maintenance, shall form part of Improved and New Releases as much as possible.
- 63.3. Upon request, the Supplier shall provide the Client with a free copy of a New Release for test and evaluation purposes. The Client is not obliged to commission New Releases.
- 63.4. If it has been agreed that the Supplier installs the Software, this obligation also applies to the New Releases the Client wishes to take in use.
- 63.5. If the Supplier chooses to issue different Software instead of a New Release and to stop Innovative Maintenance to the Software in use by the Client, the Client is entitled to full compliance with the Maintenance Agreement, or to User Rights to that new Software under the conditions for a New Release set out in the Agreement.