



## General Purchase Conditions IT & Systems Special Provisions Software

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## Article 1 General

- 1.1 These Special Provisions Software apply in addition to the General Provisions.
- 1.2 In case of conflict between the General Provisions and the Special Provisions Software, the Special Provisions Software shall prevail.

## Article 2 Definitions

- 2.1 In these Special Provisions Software, in addition to article 1 of the General Provisions, the terms below have the following meaning:

<b>Source Code</b>	The set of programme instructions in their original programming language relating to the Software, including accompanying Documentation, intended for execution by a computer in such a form that a programmer who has knowledge and experience of the programming method and technique used can use them to modify the Software.
<b>Escrow</b>	The periodic deposit of (a copy of) the Source Code with an independent custodian so that EANV, upon fulfilment of one or more of the conditions set forth in the escrow agreement, may, without the Supplier's cooperation, obtain from the custodian access to the Source Code and use it (or have it used) for bug fixing and otherwise maintaining and managing the Software.
<b>Right of Use</b>	The right by virtue of which EANV is authorised to install and use Software according to the agreed use, including all reproductions and disclosures, temporary or otherwise, reasonably necessary for that purpose.
<b>Malware</b>	Any time bombs, Trojan horses, worms, viruses or other malicious software code embedded in the Software that may alter functionality of hardware and/or software.
<b>Patch</b>	A correction, intended as temporary, of a defect in the Software.

## Article 3 Right of Use

- 3.1 The Supplier grants EANV a perpetual and irrevocable Right of Use to the Software in accordance with the Agreement, the General Provisions and the Special Provisions Software. EANV may sub-licence the Right of Use to its Affiliates.
- 3.2 The Right of Use does not include any transfer by Supplier to EANV of intellectual property rights to the Software, unless it concerns (the development of) Custom Software, to which article 15.5 of the General Provisions applies.
- 3.3 The Right of Use is non-exclusive and only transferable to third parties with the consent of the Supplier. The Supplier can only refuse consent if (i) it has a well-founded concern that third parties will violate the conditions of the Right of Use; or (ii) it has a well-founded concern of an infringement of the intellectual property rights of the Software.
- 3.4 The Right of Use is not tied to any particular Hardware or location.
- 3.5 The Right of Use shall in any case include, without EANV being liable to pay any additional fee for it:
  - a) the right to use all functionalities of the Software accessible to EANV, including those not mentioned in the Documentation;
  - b) the right to make, store, regularly test and have "hot standby" copies of the Software in

- case of a disaster or disaster simulation;
  - c) the right to use the Software for testing and development purposes;
  - d) the right to use the Software without any restriction or limitation as to place, equipment, duration or otherwise including its use by third parties for the benefit of EANV.
- 3.6 EANV may reproduce the Software free of charge as often as EANV deems necessary for the conduct of its business, unless the Agreement provides otherwise. EANV may not remove any indications of ownership and copyright when reproducing Software.
- 3.7 If the Supplier repairs defects in the Software only through the release of Patches or Improved Versions, EANV shall be entitled to receive and use them free of charge during the warranty period of Article 7, even if EANV has not agreed any Maintenance with the Supplier.

#### **Article 4 Third-party software**

- 4.1 If the Software is not owned by the Supplier, but by a third party (e.g. resale), then the Supplier must ensure that the Supplier or the third party can deliver the Software to EANV.
- 4.2 Supplier may have the Software provided by the third party only if EANV or Supplier can enter into a licence agreement with the third party under the following conditions:
  - a) Article 13 (Audit) of the General Provisions applies;
  - b) If applicable, EANV's Processor Agreement and Security Annex are signed;
  - c) The terms of the licence agreement may not conflict with the Agreement, including all its annexes, and;
  - d) The Supplier remains responsible and liable for the performance of the Agreement.
- 4.3 Prior to the formation of the Agreement the Supplier shall clarify whether licence agreements must be signed with third parties and what the content of those agreements is. If the Supplier fails to make this clear before the formation of the Agreement, and the licence agreement conflicts with the conditions as named in the previous paragraph, EANV shall be entitled to terminate the Agreement for breach (*ontbinden*) and Supplier is liable for EANV's costs incurred due to the breach.

#### **Article 5 Open source software**

- 5.1 If the Supplier uses open source software in the performance of the Agreement, the Supplier shall investigate the quality thereof and whether, and to what extent, third parties can claim intellectual property rights thereto.
- 5.2 Supplier warrants that there are no detrimental obligations attached to the license terms of the open source software, such as obligations to make the Source Code (of the Software) available to the public (copyleft).

#### **Article 6 New and Improved Versions**

- 6.1 Supplier shall ensure a consistent version policy. New and Improved Versions must be made available in a timely manner. To that end, the Supplier regularly examines the need to issue such versions. The Supplier must inform EANV as early as possible about New and Improved Versions, as well as their content, differences from previous versions (Release Notes), and consequences for the functionality of the Software.
- 6.2 Supplier shall provide EANV with a copy of New and Improved Versions for testing and evaluation purposes free of charge upon request.

- 6.3 EANV is not obliged to accept New Versions and may continue to use all old versions. Supplier shall inform EANV in writing how long Supplier can continue to warrant Maintenance of the old versions. Supplier is at least obliged to continue to provide Maintenance during the term of the Agreement, even if EANV does not accept New Versions.
- 6.4 Improved Versions and New Versions may never lead to a limitation of the functionality of the Hardware and Software, whether or not in connection with Eindhoven Airport Data. The Supplier warrants the compatibility of Improved Versions and New Versions it supplies with the Hardware and Software in use or to be in use at EANV.
- 6.5 Patches are part of Improved Versions and New Versions.
- 6.6 If the Supplier chooses to release other software instead of a New Version and to cease preventive, corrective or innovative maintenance as referred to in article 12 paragraph 1 on the Software in use at EANV, EANV may demand (i) continued performance of the obligations with regard to Maintenance, or (ii) a Right of Use on the new software on the same conditions as those for a New Version laid down in the Agreement.
- 6.7 If there is a security incident, whether due to a defect in the Software or an external event affecting the Software, the Supplier is obliged to remedy it by means of a Patch or an Improved Version.

## Article 7 Warranties

- 7.1 The Supplier warrants that the Software is of good quality and suitable for the purpose as included in the Agreement. Technical and functional properties of the Software shall at least comply with the agreed or promised specifications by the Supplier in connection with the Hardware and Software to be used by EANV.
- 7.2 Supplier warrants that for a period of twelve (12) months from the date of Acceptance it will immediately remedy, free of charge, all defects that occur during this warranty period. If Software does not function in accordance with paragraph 1 of this article for a period of twelve hours or more due to a defect, the warranty period shall extend by the duration of the defect period. If several defect periods are due to the same defect and these periods add up to ten (10) or more Working Days, the warranty period shall extend by twelve (12) months from the date on which Supplier has remedied the defect.
- 7.3 EANV may arrange for repair of defects or Maintenance, during the term of the Agreement and with retention of rights, to be carried out by a third party at the Supplier's expense. This only applies if the Supplier has not commenced the work within a reasonable period set by EANV, the work has not been carried out to EANV's satisfaction or if EANV obtains permission from the Supplier to do so.
- 7.4 The warranty in respect of Maintenance shall be subject to the same conditions and obligations for the Supplier under the Agreement, provided that the services and work shall be performed under this warranty.
- 7.5 Supplier warrants that the Software does not contain or will transmit any Malware. Upon discovery of (possible) Malware, the Supplier must immediately inform EANV and the Supplier must do everything possible to prevent and/or remove the Malware, as well as the consequences thereof.
- 7.6 If Malware is present in Software this shall not affect Supplier's Maintenance obligations, regardless of who is liable for the presence of the Malware. To the extent no warranty or Maintenance

obligation exists, Supplier shall remedy faults caused by Malware based on rates to be agreed in advance.

- 7.7 If all or part of the Software is lost before the expiry of the warranty period due to EANV's negligence or loss or theft, the Supplier shall be obliged to implement copies of the Software on the Hardware at cost price.
- 7.8 The warranty referred to in this article does not apply insofar as the Supplier proves that a defect has arisen as a result of a change made to the Software by EANV or a third party engaged by EANV without the Supplier's consent.

## **Article 8 Implementation**

- 8.1 Supplier must commence and complete the Implementation no later than the agreed dates (*fatale termijnen*). The agreed dates of Implementation may be postponed until further notice at EANV's written request.
- 8.2 If adjustments to the Hardware and/or Software are necessary for the purpose of the Implementation that are not mentioned in the Supplier's Offer, these adjustments will be made by the Supplier at its own expense.
- 8.3 If Implementation has been completed, in the view of both Parties, the Parties shall sign a proof of Implementation. This proof only constitutes Acceptance of the Implementation and not necessarily Acceptance of the Software. EANV may not refuse to sign the proof of Implementation if the delivered Software meets the agreed requirements, or contains only minor defects that do not affect its commissioning. The Supplier warrants to repair such defects with due speed after the signing of proof of Implementation at its expense.
- 8.4 Where applicable, the provisions of this article also apply to Improved Versions and New Versions.

## **Article 9 Materials**

- 9.1 If the use of the Software requires Materials, the Supplier shall transfer ownership of those Materials to EANV. The purchase price of those Materials is part of the usage fee.

## **Article 10 Escrow**

- 10.1 EANV may at any time require the Supplier to deposit the Source Code in Escrow with a professional Escrow custodian to be approved by EANV in accordance with an escrow agreement to be concluded by the Parties. Any reasonable costs associated with Escrow shall be borne by EANV.
- 10.2 Escrow shall include all undisclosed information reasonably required by EANV for error correction, maintenance and management of the Software. The Escrow must comply with standards that are customary on the Dutch market at the time of its conclusion.
- 10.3 If Supplier modifies the Source Code, Supplier must also deposit the modified version(s) in Escrow.
- 10.4 If Escrow has been agreed, the Supplier must provide EANV with written confirmation from the custodian no later than the agreed date showing that the Source Code and all information to be deposited has been deposited with that custodian.
- 10.5 EANV shall be entitled to release of the Source Code and other deposited information residing in Escrow if (i) Supplier is declared bankrupt, ceases to exist, or a third party takes over Supplier that

does not consider itself bound by the Agreement or poses unreasonable conditions to the continuation of the Agreement; (ii) Supplier materially breaches its Maintenance obligations; or (iii) the Agreement is terminated, ends within one (1) month, or is not renewed.

## **Article 11      Maintenance**

- 11.1 The Supplier must agree the Maintenance conditions of the Software with EANV at EANV's first request.
- 11.2 Even if the Parties do not agree on Maintenance until after the conclusion of the Agreement, the General Provisions and these Special Provisions Software shall apply to it.
- 11.3 The Supplier warrants that it can Maintain the Software for at least the duration of the Agreement.

## **Article 12      Content Maintenance**

- 12.1 Maintenance relating to Software includes:
  - a) Preventive maintenance:  
Maintaining the Software and taking measures to prevent failures. As part of preventive maintenance, the Supplier shall regularly and at least once every six months examine the Software for its proper functioning.
  - b) Corrective maintenance:  
The detection and repair of defects in the Software and the provision of Improved Versions and Patches in order to repair defects, after they have been reported by EANV or are otherwise known to the Supplier.
  - c) Innovative maintenance:  
Modifying parts of the Software in order to improve its reliability, change functions, or add new functions, including making New Versions available.
  - d) Customising the Software:  
Adapting the Software at EANV's request if other Hardware and/or Software changes or if the influence of external factors or the connection of other Hardware and/or Software gives cause to do so.
  - e) Support:  
Providing assistance in fixing defects, as well as advising on the use and operation of the Software.
  - f) Training:  
Training EANV personnel, where appropriate, at EANV's request, so that they can take care of maintenance work.
- 12.2 The parties will further agree on the exact nature, scope and cost of the Maintenance.

## **Article 13      Place and times of execution Maintenance**

- 13.1 Maintenance that may lead to disruption of EANV's business continuity shall only be carried out by the Supplier with EANV's prior written consent.
- 13.2 Supplier shall in principle perform Maintenance at or from Supplier's premises. Maintenance activities, which cannot reasonably be performed other than at the EANV, will take place at EANV.
- 13.3 Supplier must provide itself with the materials required to carry out the Maintenance in good time.

## **Article 14      Maintenance Custom software**

- 14.1      If EANV maintains Custom Software itself or has it maintained by a third party, the Supplier shall on request support EANV in doing so for a competitive fee. The Supplier shall provide the (additional) information required for that purpose to EANV or a third party engaged by it on request. The above also applies to management activities with regard to Custom Software that EANV performs itself or has a third party perform.