

## GENEXIS' GENERAL TERMS AND CONDITIONS FOR DELIVERY

### Article 1. Definitions

1. In these Terms and Conditions the terms set out below have the following meanings:
  - a. Genexis: Genexis B.V. and/or the legal entities which are a group company of Genexis B.V. and which are engaged by the Customer for the Performance, as well as it/their successors in law.
  - b. Agreement: any agreement between Genexis and the Customer concerning the delivery of a Performance to the Customer by Genexis, and any change or amendment thereto, as well as any (legal) acts in preparation or execution of such agreement.
  - c. Performance: any Products delivered and/or to be delivered, Services performed and/or to be performed and/or any work completed and/or to be completed, or a combination thereof, and however described, by Genexis to the Customer.
  - d. Product: any products, including, but not limited to, components, materials and/or other items delivered or to be delivered by Genexis to the Customer, irrespective of whether the Agreement solely pertains to the delivery of Products, or includes Services or Work.
  - e. Customer: any person or legal entity that placed an order with Genexis for Products, Services or Work, to whom Genexis has send an offer or proposal, that entered into an Agreement with Genexis and/or or with whom Genexis is in the process of discussing or negotiating the possible conclusion of an Agreement.
  - f. Services: any services performed and/or to be performed by Genexis to the Customer, however described and irrespective of whether the Agreement also includes the delivery of Products and/or the completion of Work or not.
  - g. Work: work of a tangible nature completed and/or to be completed by Genexis, however de- scribed and irrespective of whether the Agreement also includes the delivery of Products and/or Services or not.
  - h. Terms and Conditions: these general terms and conditions for delivery.

### Article 2. General information

1. These Terms and Conditions apply to every offer, proposal of Genexis and any Agreement between Genexis and the Customer governing the legal relationship concerning the delivery of a Performance by Genexis to the Customer, unless parties have explicitly agreed in writing otherwise.
2. Genexis is entitled to engage third parties in the performance of the Agreement. The Terms and Conditions also apply to Agreements for which Genexis makes use of the services of third parties for the execution of the Agreement, or a part thereof. If Genexis makes use of the assistance of a third party in the performance of any of Genexis' obligations towards the Customer, Genexis will be responsible for the action of the third party in the same way as Genexis would be under these Terms and Conditions and the Agreement as if Genexis would have performed the action itself, unless the Customer has prescribed the (use of the) third party.
3. The applicability of any purchase conditions or any other conditions of the Customer are explicitly excluded and rejected, unless these are accepted in writing by Genexis in respect of any specific transaction.
4. If, at any time, one or more provisions in these Terms and Conditions are fully or partially void or voidable, the remaining provisions of these Terms and Conditions will remain in full force and effect. In such an event, Genexis and the Customer will consult each other in order to agree on new provisions which are not void and voidable to replace the void or voidable provisions and which new provisions as closely as possible corresponds with the void and voidable provision, whereby the intent and meaning of the original provisions shall be taken into consideration as far as possible.
5. Additions to or deviations from these Terms and Conditions shall only apply where agreed in writing between the parties. In the event that a stipulation from these Terms and Conditions is in contradiction with a stipulation in the Agreement, the stipulation in the Agreement shall prevail.
6. A failure by Genexis to exercise a right under these Terms and Conditions and/or an Agreement, or a delay thereof shall not operate as a waiver of such right. No single or partial exercise of a right under the Terms and Conditions and/or Agreement by Genexis shall preclude any other or further exercise of such right or other rights.
7. Genexis is entitled to transfer any rights and obligations ensuing from the Agreement to third parties.

### Article 3. Proposals and offers

1. All proposals and offers made by Genexis are without any obligation, unless stated otherwise by Genexis in writing.
2. Genexis cannot be bound to its proposals or offers if the Customer can reasonably understand that the proposals or offers, or a part of a proposal or an offer, manifestly contain a mistake or clerical error.
3. If the reply to an offer by the Customer differs or contains additions, limitations or other modifications from the offer of Genexis (whether or not the difference/addition/limitation/modification pertains to points

of minor significance), Genexis shall not be bound by the difference, additions, limitations or other modifications, unless Genexis states explicitly otherwise in writing.

4. If Genexis provides a quotation for a Performance consisting of multiple phases/stages/parts, the quotation shall only apply if the Customer accepts the offer in full and takes delivery of all phases/stages/parts. If the Customer only wants a part of the phases/stages/parts performed, the price per phase/stage/part shall be higher than a corresponding proportion of the quoted price, unless Genexis stated explicitly otherwise in writing in its quotation.
5. Offers and proposals, and/or any agreed upon deviations, do not automatically apply to future Agreements. The Customer cannot derive any rights from any offers, proposals and/or any agreed upon deviation, for other and/or future transactions.
6. An Agreement, as well as modifications and additions thereto, is concluded at the moment when accepted or confirmed in writing by Genexis or after Genexis started to perform the Agreement.
7. If the Customer provides or must provide any data, information and/or specifications, the Customer will be fully responsible for these data, information and/or specifications, including but not limited the accuracy, and the timely supply thereof. Genexis accepts no liability with regard to such data, information and/or specifications.

#### **Article 4. Terms of delivery, execution of Agreements**

1. All (delivery/completion/performance) periods, terms and/or dates, including dates for the Performance, agreed upon or specified by Genexis shall in all cases be target dates, shall not have a binding effect on Genexis, shall never be considered a final deadline and shall in all cases be merely indicative. The mere fact that a (delivery/completion/performance) period, term or date, final or otherwise, specified by Genexis or agreed between the parties has been exceeded, shall not mean that Genexis is in default. In cases of late delivery or late completion of the Agreement, Genexis shall only be in default upon notification of default in writing, providing Genexis with the opportunity to perform within a reasonable period, and Genexis does not comply with its obligations after the aforesaid period. The notice of default of the Customer must contain as comprehensive and detailed a description of the breach as possible, in order to ensure that Genexis has the opportunity to respond adequately.
2. Genexis shall not be bound by a (delivery) period, term or date, final or otherwise, (i) that can no longer be achieved as a result of circumstances outside of Genexis' control that occurred after the date on which the Agreement was concluded, or (ii) if the parties have agreed on a change to the content or scope of the Agreement (additional work, change in specifications etc.) or a change in the approach to the execution of the Agreement.
3. If Genexis requires information and/or auxiliaries etc. from the Customer for the execution of the Agreement, the term for execution shall not commence until the Customer has provided Genexis with the full and correct information and/or auxiliaries etcetera.
4. Delivery of the Products shall be Ex Works (EXW) warehouse Genexis in the Netherlands, in accordance with the most recent Incoterms in force at the time when the Agreement is concluded unless parties otherwise agreed in writing. Delivery shall be deemed to have taken place at the time where the Products are made available to the Customer. Unless parties agreed otherwise in writing, all Products shall be transported for the account and risk of the Customer, even if Genexis has arranged the transport and/or where the dispatch is made carriage paid.
5. If the Customer fails to collect the Products in full or in time or fails to provide information or instructions necessary for the delivery, Genexis is entitled to store the Products at the expense and risk of the Customer or to sell them to a third party. The Customer will nevertheless be due the purchase price plus interest and costs by way of damages, increased by storage and handling costs.
6. Genexis shall provide all Services and Work on the basis of a best efforts obligation, unless and in so far as Genexis has explicitly undertaken in the written Agreement to achieve a specific result and the result in question is sufficiently determined.
7. Genexis shall at all times be entitled to execute the Agreement and/or deliver the Performance in stages/parts. Genexis shall be entitled to invoice each complete stage/part/partial delivery separately.
8. If the Agreement is executed in stages/parts, Genexis may suspend the execution of those parts that belong to a following stage/part until the Customer has given written approval of the results of the previous stage/part. The non-acceptance of a specific stage and/or part shall not affect the acceptance of a previous stage(s) and/or other part(s), where appropriate.
9. If the Customer fails in the proper performance of Customer's obligations to Genexis, the Customer shall be liable for all damage (including costs) incurred by Genexis arising from that failure, either directly or indirectly.
10. It is possible that the Services and/or Work needs to be performed on any site of the Customer. The Customer shall ensure that Genexis can carry out its activities without interruption and at the agreed time and that the requisite facilities are made available to it when carrying out its activities, such as (i) water and electricity, (ii) the correct hardware and software and/or (iii) internet.

#### **Article 5. Changes and additional Products, Services or Work**

1. If Genexis has delivered any Performance that falls outside of the content or scope of the agreed Performance, at the request or with the prior consent of the Customer, such Performance shall be paid for by the Customer in accordance with the agreed rates. If no rates have been agreed, Genexis' standard rates shall apply. Genexis shall under no circumstances be obliged to comply with such a request, and where it does comply, it may require the Customer to enter into a separate written Agreement for this purpose.
2. The Customer accepts the Performance as referred to in this Article 5 may affect the agreed or anticipated time of completion/delivery of the Performance and the responsibilities of the Customer and Genexis. The fact that (the demand for) additional Performance during the execution of the Agreement shall under no circumstances constitute grounds for the Customer to terminate or rescind the Agreement.
3. In so far as a fixed price has been agreed in respect of the Performance, Genexis shall, upon request, notify the Customer in writing regarding the financial implications of the additional Performance as referred to in this Article 5.

#### **Article 6. Term of the agreement, suspension, dissolution and early termination of the agreement**

1. The Agreement shall be entered into for a fixed term or an indefinite period of time. The Agreement between Genexis and the Customer is for an indefinite term, unless the nature of the Agreement provides otherwise or if parties agree otherwise explicitly and in writing.
2. If the agreement has been entered into for an indefinite period of time, a notice period shall apply to each of the parties as agreed. If the parties have not agreed on a specific notice period, a reasonable period of time must be observed on termination. Genexis shall under no circumstances be obliged to pay any compensation as a result of termination of the Agreement.
3. The Customer shall under no circumstances be entitled to terminate an Agreement that has been entered into for a fixed term before the end of the term.
4. Genexis shall be entitled to terminate the Agreement, in part or in full, with immediate effect without notice of default being required, if: (i) the Customer is granted a suspension of payments, provisionally or otherwise, or if the Customer applies for a suspension of payments, (ii) the Customer is wound up or terminated for reasons other than reconstruction or the merger of companies, (iii) the Customer becomes bankrupt or is liquidated, or an equivalent of the previous concepts occurs (pursuant to a foreign law system), (iv) a composition of creditors is offered by the Customer, (v) any asset of the Customer is attached, (vi) the Customer fails to comply with an obligation arising from the Agreement, or does not fulfil it on time or not properly.
5. In the event of a suspension or termination by Genexis, Genexis shall under no circumstances be obliged to reimburse any sums of money that have already been received or to pay any compensation for damages or costs that could arise from that suspension or termination in any way, save where the claim for damages is based on an attributable breach of contract or a tort of Genexis.
6. If the Agreement is terminated, any claim of Genexis against the Customer becomes immediately due and payable.
7. The Customer shall only be authorised to terminate the Agreement if Genexis fails to comply with a fundamental obligation under the Agreement and Genexis, after receipt of a written notice of default providing as many details as possible and setting a reasonable term in which the breach can be remedied, still attributable failed to meet its fundamental obligations arising from the Agreement.

#### **Article 7. Force Majeure**

1. In these Terms and Conditions, Force Majeure means, in addition to the circumstances intended in the law and case-law, all external causes, whether they could have been foreseen or not, over which Genexis has no control, but due to which Genexis is not capable or makes it unreasonably burdensome for Genexis to fulfil its obligations or any part thereof, temporarily or permanently, including but not limited to strikes at Genexis' or at third parties, electricity failure, faults effecting the internet, computer network or telecommunication facilities, whether circumstances, fire, loss or theft of tools, the circumstance where suppliers and/or sub-contractors of Genexis fail to comply with their obligations at all or on time, government measures, general transport problems, the defectiveness of items, hardware, software or materials provided by third parties that Genexis has been instructed to use by the Customer, the unavailability of one or more members of staff etc.
2. Genexis shall not be liable to the Customer for any failure to perform its obligations, for as far as that failure is caused or relates to Force Majeure. In case of Force Majeure, the delivery and other obligations of Genexis are suspended for the duration of the Force Majeure event. If this period lasts more than (3) three months, Genexis is entitled to terminate the Agreement without obligation to compensate the Customer for any damages.
3. Insofar as Genexis has already partially fulfilled its obligations arising from the Agreement, or shall be able to fulfil its obligations in part, at the time the Force Majeure event originates, Genexis shall be

entitled to invoice for the fulfilled part or as the case may be, the part that will be fulfilled and the Customer shall be obliged to pay this invoice as if it were a separate Agreement.

#### **Article 8. Prices, payment and collection costs**

1. All prices for the Performance are in Euros, net cash, without reduction and exclusive of VAT and any other taxes, duties, levies, costs and charges owed at the time of delivery, unless stated otherwise in writing.
2. Except where explicitly agreed otherwise, the prices of the Products are based on delivery Ex Works, warehouse Genexis in the Netherlands, in accordance with the most recent Incoterms in force at the time when the Agreement is concluded, and shall not include the costs of transport, insurance, tackles and hoists, the hiring of temporary facilities etc. Only if the parties have agreed this explicitly in writing, Genexis shall install, configure and/or connect the Products, or arrange for this to be carried out. Where Genexis is obliged to install and/or configure hardware, this shall not include carrying out data conversion or the installation of software, unless parties explicitly agreed otherwise in writing.
3. All cost estimates and budgets issued by Genexis shall be merely indicative, except where specified otherwise in writing by Genexis. The Customer may under no circumstances derive any rights or expectations from any cost estimates or budgets issued by Genexis. An available budget made known by the Customer to Genexis shall under no circumstances apply as a (fixed) price agreed between the parties for the Performance to be provided by Genexis. Genexis shall only be obliged to notify the Customer that there is a risk that a cost estimate or budget will be exceeded if this has been agreed between the parties in writing.
4. Any changes in factors affecting the price for the Performance or Genexis' additional costs, - even if parties agreed on a fixed price - including, but not limited to purchase prices, exchange rates, import and export duties and other levies due upon import or export, insurance rates, freight rates and other levies or taxes after the conclusion of the Agreement will be recharged by Genexis to the Customer. In case the consequence of this provision causes a price increase of more than 10% within three months after the conclusion of the Agreement, the Customer has the right to cancel the relevant parts of the Agreement by registered mail within five days upon notification of the price increase without being entitled to any damage compensation, unless Genexis, in that event, is still prepared to execute the Agreement on the grounds of the original arrangements.
5. The Customer shall pay all invoices of Genexis without deduction, suspension, set-off or discount within (30) thirty days of the date on the invoice to the bank account designated by Genexis, in the invoiced currency, unless the parties agreed upon otherwise in writing. Genexis is entitled to send invoices periodically.
6. The payment term mentioned in Article 8.4 or the otherwise agreed-upon dates/term of payment, is/are final and concern the last due dates. If the Customer fails to pay the invoiced amounts in time, the Customer will be legally in default by operation of law. As from the due date to the date on which the principal sum is paid in full the Customer shall owe - besides the costs mentioned in Article 8.7 - statutory commercial interest on the outstanding amount without a demand or notice of default being required.
7. All reasonable actual extrajudicial costs and judicial costs, internal as well as external, incurred by Genexis, in obtaining an out of court settlement, in collecting its claim, protecting its rights, and/or in the event that Genexis becomes involved in any way in a dispute with or a procedure against the Customer, regardless if it is as claimant or defendant, shall be borne by the Customer, even when these costs exceed the liquidated amount. The Customer will be obligated to pay to Genexis a minimum amount of at least 15% of the principal sum plus VAT, with a minimum of EUR 150, from the due date to the date on which the principal sum is paid in full, without a demand or notice of default being required, as compensation for the extrajudicial costs incurred to obtain an out-of-court settlement or collecting its claim or protecting its right. The Customer shall also owe statutory commercial interest on extrajudicial and judicial costs, from the date of default to the date on which the extrajudicial and judicial costs are paid in full.
8. Payments made by Customer will, notwithstanding the description or instruction of the Customer, first be applied to the costs, then the interest that is due and finally towards the principal sum – more specific with the invoices in the order of their age, also if not yet matured - and the accrued interest.
9. Objections to the amount of an invoice shall not suspend the obligation of the Customer to pay the invoiced amount.
10. Genexis shall at all times be entitled to require the Customer to give proper security for the performance of all its obligations under the Agreement in a manner as will be deemed sufficient by Genexis or to demand that the Customer pays the purchase price for the Performance in advance. Failing immediate provision of such security or advance payment, Genexis will be entitled to suspend further

execution of the Agreement until such time as the Customer will have provided the required security or payment in advance.

#### **Article 9. Retention of title and rights**

1. Notwithstanding the actual delivery, all Products supplied by Genexis shall remain the property of Genexis until such time, and the title to the Product will pass to the Customer after, the Customer has fully paid any amounts in connection with the Products delivered or to be delivered due to Genexis the Agreement(s), including the principal sum, any surcharges, taxes and expenses that may be due in accordance with the Agreement as well as any work or services that may have been performed or are to be performed by virtue of such Agreement. The subject to retention of title delivered Products will be for the account and risk of the Customer.
2. As long as the title to the Products has not passed to Customer, the Customer shall not be entitled to lease, rent out or sell and deliver the Products to third parties or have third parties use them, to pledge them or otherwise encumber them in any way or position them out of control. However, the Customer that acts as a reseller shall be entitled to sell, resell, rent out and lease the Products that are subject to Genexis' retention of title in so far as this is customary within the context of the normal course of its business.
3. Rights, including rights of use, shall be granted to the Customer or transferred, where appropriate, subject to the condition that the Customer has paid all of the amounts due pursuant to the Agreement concluded between the parties in full. If the parties have agreed that the Customer shall be subject to a periodic payment obligation in respect of the granting of a right of use, the Customer shall be entitled to the right of use for as long as it continues to meet its periodic payment obligation.
4. The Customer should do all that may reasonably be expected of the Customer to protect Genexis' rights. The Customer shall preserve the Products delivered to it subject to retention of title carefully and as Genexis' recognizable and identifiable property. If and as long as Genexis is the owner of the Products, Customer shall notify Genexis without delay in the event that any part of the Products should be lost or damaged, or in the event that a third party sequesters (any part of the) Products covered by retention of title or wish to attach rights to them or assert their rights to them. Furthermore, the Customer shall inform Genexis upon its first request where the Products in respect of which Genexis has retained its title, are located.
5. The Customer undertakes to insure the supplied products covered by retention of title, to keep them insured against normal business risks, including but not limited against fire, damage caused by explosion and water and against theft, and to provide to Genexis a copy of the insurance policy immediately upon first request. Genexis is entitled to the money from any payment from the insurance. Insofar as necessary, the Customer undertakes in advance to cooperate with Genexis in all that is or might prove necessary or desirable in that context. Upon Genexis' first request to that effect, the Customer shall assign any and all rights towards the insurers involved to Genexis.
6. Genexis shall at all times be entitled to reclaim the Products delivered to the Customer subject to retention of title in case the Customer has not fulfilled its obligations or Genexis expects that the Customer will not fulfil its obligations. The Customer hereby unconditionally and irrevocably gives its permission and shall lend every co-operation to Genexis or to a third party designated by it, to enter all locations where Genexis property will be located and to collect said property if and when Genexis wishes to exercise its rights of ownership. The costs of and relating to such reclaim will be for the account of the Customer.

#### **Article 10. Guarantee**

1. Unless it has been expressly agreed otherwise in the Agreement, Genexis guarantees that, subject to the conditions set out below, on delivery and for a period of (12) twelve months from the date of delivery of the Products, the Products, are suitable for normal use and are of the quantity and meet the specifications parties agreed upon in writing, if the Products are used, installed and maintained in accordance with the instructions. Genexis does not guarantee that the Products will be suitable for the use envisaged by the Customer or that the Products are fit for any particular purpose and/or possess any particular qualities, unless the written Agreement between the parties specifies that specific purpose of use or specific quality clearly and without reservation .
2. If Genexis delivers Products to the Customer which Genexis has obtained from its supplier(s), Genexis shall never be bound by any warranty or liability towards the Customer that extends beyond the warranty or liability that Genexis can claim of its supplier(s), unless parties explicitly agreed otherwise in their written Agreement.
3. Genexis shall have no guarantee obligations whatsoever towards the Customer if the Customer has not fulfilled its obligations towards Genexis (both financially and otherwise).
4. The guarantee does not cover and Genexis shall have no (guarantee) obligations whatsoever towards the Customer, in/with regards to the following events and/or if the defects are, partly or entirely, caused by or the result from: (i) normal wear and tear, (ii) minor deficiencies or deviations, which fall within the levels of tolerance as accepted in good commercial practice, (iii) incorrect, improper, negligence,

injudicious or incompetent use, maintenance, storage, installation, measurement or transportation, set-up and/or connection etc. of the Products by the Customer or a third party, (iv) the use of the Products by the Customer or a third party for a purpose other than that for which they are normally or specifically intended, (v) the maintenance or repair by the Customer or a third party without Genexis' prior written consent, (vi) the modification by the Customer or a third party or the attachment of other items to the Products by the Customer or a third party, (vii) materials, instructions or a design provided or stipulated by the Customer, (viii) the act of the Customer or a third party in contrary to Genexis instructions, indications and advice or any manuals, (ix) any government regulation with regard to the Products or the manufacturing or use etc. thereof or the Services and/or (x) circumstances over which Genexis does not have any control, including weather conditions (such as, but not limited to, extreme rainfall or temperatures, lightning, extreme humidity), earthquakes, fire, surges in electric currents and/or other deviations in the electricity grid and/or defects and damage cause by equipment connected to the Product.

5. The installation instructions for the Products are available from Genexis on request. The Customer is responsible for distributing these installation instructions among its installation staff/party and/or customers and for giving correct instructions to its installation staff/party and/or customers.
6. Genexis' guarantee obligations with respect to the Products are strictly limited to the terms of warranty as set forth in this Article 10. The Customer explicitly relinquishes all its (other) rights and claims it may have under the applicable law. Genexis will determine, in its sole and absolute discretion, whether any guarantee claim is covered under Genexis' guarantee. In the event that Genexis deems a guarantee claim justified, it shall at its sole discretion, deliver a replacement, similar but not necessarily identical, Product or components (after which the replaced Products or components shall become the property of Genexis) or make every effort to repair the Products free of charge within a reasonable period upon receipt of the claim or give a price reduction or send a credit invoice.
7. Replacement Products or components under warranty will be delivered Delivered Duty Paid (DDP) in accordance with the most recent Incoterms in force at the time when the Agreement is concluded, warehouse of the Customer in the European Union. Troubleshooting at the spot will be for the account and risk of the Customer, including, but not limited to disassemble, assemble, mounting, installation, set-up and/or connection of the Products. Any data conversion required as a result of the rectification of defects or replacement falls outside the scope of the guarantee.
8. The Products must be made available to Genexis for examination upon first request, freight pre-paid by the Customer. The Customer shall not be entitled to return any Products without the prior written consent of Genexis. The costs of any returns shall be for the Customer and the Products will remain at its risk.
9. Repair or replacement of a Product or its components shall not entail the extension of the guarantee period.

#### **Article 11. Research and complaints, time limit**

1. The Customer is required to inspect, or to have inspected, the Products as soon as the Products are placed at the Customer's disposal and/or as the Services are performed and/or if the Work in question or a part thereof has been completed. In addition, the Customer should examine whether the quality and/or quantity of the delivered Performance matches the Agreement and complies with the requirements agreed by parties. Genexis should be notified in writing of any visible defects in the Performance within the time limit of fourteen days after delivery of Performance. Genexis should be notified in writing of all other complaints and defects immediately, or in any case within the time limit of fourteen days at the latest, after the date on which the shortcomings/defects become known or might reasonably have been expected to become known to the Customer. The notification of a shortcoming/defect/complaint should contain a description of the concerning Performance and the nature of the shortcoming/defect/complaint that is as detailed as possible so that Genexis can respond adequately. The Customer should allow Genexis the opportunity to examine the complaint or to have the complaint examined.
2. If the Customer submits a complaint or notification of default, even within the times limit, this will not suspend any obligation of the Customer, including its payment obligation.
3. Any failure by the Customer to report a complaint or defect within the time limits specified in Article 11.1, shall result in the loss of any claims of the Customer whatsoever in this respect.
4. If it is established that a complaint cannot be substantiated by the Customer or if the complaint falls outside the scope of the guarantee, the costs arising from the complaint and related thereto, including the costs for examination on the part of Genexis, shall be fully borne by the Customer, including administration costs, shipping costs and call-out charges. If it is established that a complaint cannot be substantiated or if the complaint falls outside the scope of the guarantee, Genexis shall invoice the costs of Performance and the rectification of defects, that fall outside the scope of the guarantee in accordance with its standard rates.
5. Notwithstanding statutory time limits, in any event, all claims of the Customer will become time-barred unless legal proceedings will have been instituted before the Court of competent jurisdiction within

twelve months after the date of delivery/performance/execution, or the date that delivery/performance should have been made.

#### **Article 12. Liability**

1. The total liability of Genexis due to an attributable failure to comply with any of its obligations under an Agreement, these Terms and Conditions, based on a tort or due to any other reason or any other ground, is limited to the amount that Genexis receives from its insurer under its liability insurance in relation to the damage for which the Customer has held Genexis liable.
2. If no insurance payments are made in relation to the damage in question, the liability of Genexis is limited to, the guarantee settlement provided in Article 10 (direct damages) and/or for Work and/or Services, the compensation of the direct damages or loss not exceeding the sum of the invoice of the Work and/or Services concerned. The Customer explicitly waives all other claims it may have.
3. In no circumstances will Genexis be liable for indirect, special, consequential, criminal or incidental damage or loss, including but not limited to losses caused by delays, loss of profit, lost savings, damage due to business interruption, increased operational costs, loss as a result of claims from the Customer's customers, loss of customers, reduced goodwill, loss in connection with the use of items, materials or software provided by third parties that Genexis is instructed to obtain by the Customer and loss in connection with the engagement of suppliers by Genexis on the Customer's instructions etc., howsoever caused, regardless of the basis of liability, and regardless of whether it was advised in advance of the possibility of such damages arising in any way from the Agreement or otherwise. The liability of Genexis due to the scrambling, destruction or loss of data or documents shall also be excluded.
4. The limitations to the liability included in Articles 12.1, 12.2 and 12.3 shall not apply insofar as the damage in question is caused by an intentional act or gross negligence on the part of Genexis' management.
5. Genexis shall not be liable for damage or loss of any nature due to the fact that Genexis relied on incorrect and/or incomplete data, information or specifications provided by or on behalf of the Customer.
6. Except where performance by Genexis is permanently impossible, Genexis shall only be liable as a result of an attributable failure to perform any obligation if the Customer gives Genexis immediate notice of default in writing, setting a reasonable term in which the breach can be remedied, and Genexis still attributable fails to meet its obligations after the aforesaid period. The notice of default must contain as comprehensive and detailed a description of the breach as possible and as completely as possible, in order to ensure that Genexis has the opportunity to respond adequately.
7. A condition for the existence of any right to compensation shall in all cases be that the Customer notifies Genexis in writing of the loss or damage immediately after it occurs. Any claims for damages against Genexis shall expire automatically by the mere passage of twenty-four months from the date on which the claim arose.
8. The provisions of this Article 12 and all other restrictions and exclusions of liability referred to in the Terms and Conditions are third party clauses which also apply in favour of all (legal) persons, including third parties, that Genexis engages to execute (a part of) the Agreement and all employees and the board of directors of Genexis. The previous mentioned (legal) persons can therefore rely on the provisions of this Article 12 as well as all other restrictions and exclusions of liability referred to in these Terms and Conditions and/or in the Agreement.
9. The Customer shall indemnify Genexis against any and all (impending) claims by third parties against Genexis, the costs (including reasonable legal fees) of defense against such claims, and any obligations Genexis has to third parties, if such claims are based on, arise from or are in connection with any act or omission of the Customer and/or any of its employees or that can be attributed to the Customer.
10. The Customer shall indemnify Genexis against any and all (impending) claims by third parties, including Genexis' employees, the costs (including reasonable legal fees) of defense against such claims, and any obligations Genexis has to these third parties including Genexis' employees, if such claims concern any injury suffered and/or any damage suffered, whether or not in connection with the execution of the Agreement, as a result of an act or omission on the part of the Customer and/or any of its employees and/or any other failure that can be attributed to the Customer and/or of unsafe situations within the Customer's organisation.
11. The Customer is bound to support Genexis without delay both out of court and in court and to do all that may be expected of the Customer and requested by Genexis, in connection with the handling of any claim of a third party. If the Customer fails to take adequate measures, Genexis, without notice of default, is entitled to take those measures itself. The risk and expense of all costs and damage arising on the part of Genexis and third parties shall be borne by the Customer.

#### **Article 13. Intellectual property**

1. All (intellectual property) rights, developed during the Performance and all (intellectual property) rights whether existing as of the date of the Agreement or not, relating to the Products, Services and/or Work

or other materials such as designs, analyses, documentation, reports, quotations and all other material developed or made available to the Customer during or in the context of the Agreement, including without limitation all trademarks, copyrights, patents, trade secrets, know-how, technology, data, designs, specifications, materials, processes, computer software and related documentation and source code and other (intellectual property) rights and knowhow, are and shall remain the exclusive property of Genexis, its licensors or its suppliers. Nothing in the Agreement or the Terms and Conditions shall be deemed to transfer or grant to the Customer a license or other right to use this Genexis' intellectual property, except as expressly provided in the written Agreement.

2. The Customer undertakes not to infringe or to attack Genexis' (intellectual property) rights in any way, directly or indirectly, by use or otherwise and acknowledges that Genexis is the beneficiary with regard to these rights.
3. The Customer shall ensure that all information received from Genexis that is known or should reasonably be known to be of a confidential nature is kept secret and Customer will not disclose any of such information to any third purpose. The Customer shall only use such confidential information for the purpose for which it has been provided. Information shall in any event be regarded as confidential if it is designated as such by Genexis.

#### **Article 14. Applicable law and disputes**

1. All offers and proposals issued by Genexis, these Terms and Conditions and any Agreements and/or any agreement resulting therefrom or related thereto, shall be exclusively governed by Dutch law.
2. If the Customer is domiciled in a Member State of the European Union, any and all disputes that may arise between Genexis and the Customer, ensuing from or relating to any offer or proposal of Genexis, the Terms and Conditions, the Agreement and/or any agreement resulting therefrom or related thereto, shall be exclusively submitted to the competent court in the district Oost-Brabant, location 's-Hertogenbosch the Netherlands. Nonetheless, Genexis also has the right to submit the dispute that may arise between Genexis and the Customer, ensuing from or relating to any offer or proposal of Genexis, the Terms and Conditions, the Agreement and/or any agreement resulting therefrom or related thereto, to a court of the Member State where the Customer is domiciled.
3. If the Customer is not domiciled in a Member State of the European Union, any and all disputes that may arise between Genexis and the Customer, ensuing from or relating to any offer or proposal of Genexis, the Terms and Conditions, the Agreement and/or any agreement resulting therefrom or related thereto, shall be finally settled by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce ('ICC') in accordance with the following: (i) the arbitral tribunal shall be composed of three (3) arbitrators; (ii) the place of arbitration shall be the Netherlands; (iii) the arbitral procedure shall be conducted in the English language and (iv) the arbitral tribunal shall decide in accordance with the rules of law.
4. Before starting a proceeding as referred to in Article 14.2 or Article 14.3, the parties shall do their utmost to resolve the dispute in mutual consultation. If the parties do not reach an amicable settlement regarding the dispute within sixty (60) days (or another period agreed upon by the parties in writing) after the written request of one of the parties to negotiate about a settlement regarding the dispute, each party shall be entitled to submit the dispute to the competent court as mentioned in Article 14.2 or the ICC as mentioned in Article 14.3.
5. The provision of Article 14.3 shall not prevent either party from requesting preliminary relief in summary proceedings or from taking precautionary measures if the party deems doing so necessary.

#### **Article 15. Location and amendments to Terms and Conditions**

1. Genexis shall be entitled to alter these Terms and Conditions or make any additions thereto unilaterally. Genexis shall notify the Customer thereof in writing. Customer accepts such modifications and additions in advance. Unless the Customer informs Genexis in writing, that it does not accept the changes and/or additions within 14 days after the date of the notification of Genexis, the Customer shall have accepted such modifications and additions.
2. The latest version of the Terms and Conditions filed or, as the case may be, the version applicable at the time of the effectuation of the Agreement in questions, shall apply.