

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY FOR PRODUCTS AND SERVICES OF Growficient B.V., a limited liability company organized and existing under the laws of the Netherlands, with its registered seat and official office in (5624 CL) Eindhoven, at Boschdijk 764, the Netherlands, registered with the Dutch trade register of the Chamber of Commerce under number 72514876.

CHAPTER I. GENERAL PROVISIONS

Article 1. Definitions and Interpretation

1. For the purpose of these GTC and all related documents, the capitalized terms as defined below in alphabetical order shall have the following meanings whereby these terms may be used in the singular or the plural form and vice versa, as the context so requires:

‘Agreement’ the agreement concerning the execution of the Performance concluded in Writing between the Parties of which these GTC form an integral part, including all appendices, subsequent amendments thereof and/or addenda thereto as may be agreed upon in Writing between Parties.

‘Article’ any article of these GTC.

‘Confidential Information’ the Agreement, its terms and execution, as well as all information and know-how (including but not limited to designs and other Intellectual Property Rights) furnished by a Party to the other in any form whatsoever or otherwise coming to a Party’s knowledge in connection with the performance of the Agreement and all data derived directly or indirectly from such information and all warranty claims, if any, which may arise under the Agreement.

‘Customer’ the firm or company named as such in the Agreement.

‘Customer Data’ all data strictly related to the use of the Product and/or Services by the Customer (including all data generated in the course of the SaaS that is strictly related to the Customer)

‘Force Majeure’ includes, but is not limited to, Act of God, directive of Government or of persons purporting to act therefore, legislation, war, civil disturbance, fire, drought, failure of power supply, explosion, riot, disturbances or standstill of essential production equipment, flood, earthquake, lock-out, transportation issues, shortage of essential raw materials, strike or other action taken by employees in contemplation of or furtherance of a trade dispute or owing to any liability to procure materials or force majeure of any other nature, including non- or late delivery due to non- or late fulfilment of obligations of subcontractors of Growficient or transportation companies engaged by Growficient and/or solvency and/or liquidity issues and/or bankruptcy of third parties engaged by Growficient, in so far as any of these circumstances prevent Growficient’s performance of the Agreement.

‘Group Company’ means, with respect to the Party to which it refers, a (legal) entity that is affiliated with, or that directly or indirectly controls, is controlled by or is under common control with, such Party.

‘Growficient’ Growficient B.V., a limited liability company organized and existing under the laws of the Netherlands, with its registered seat and official office in (5624 CL) Eindhoven, at Boschdijk 764, the Netherlands, registered with the Dutch trade register of the Chamber of Commerce under number 72514876, and any of its Group Companies.

‘GTC’ the underlying general terms and conditions of sale and delivery for Products and Services of Growficient.

‘Intellectual Property Rights’ registered and unregistered intellectual and industrial property rights and applications, including but not limited to patent rights, trademark rights, database rights, design rights, inventions, processes, formulae, copyrights, business and product names, logos, slogans, trade secrets, industrial models, processes, designs, methodologies, computer programs (including all source codes) and related documentation, technical information

(including, without limitation, information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions), manufacturing, engineering and technical drawings, know-how and information, copies and tangible embodiments of all the foregoing, in whatever form or medium and any moral rights and the like associated therewith.

‘Offer’ each offer concerning the execution of the Performance in Writing.

‘Party’ each of Growficient and the Customer separately.

‘Parties’ Growficient and Customer together.

‘Performance’ the performance to be executed by Growficient on the basis of the Agreement, i.e. the delivery of Products and/or carrying out of the Services.

‘Product’ the product, Software, equipment and related goods to be delivered by Growficient under the Agreement, as specified in the Specifications.

‘Purchase Order’ a Written purchase order issued by the Customer for the purchase of the Performance, by virtue of which Growficient shall carry out the Performance, including any annex, addition or modification thereto.

‘SaaS’ a service by which Growficient makes Software available to the Customer remotely through the internet or another data network, and maintains this availability remotely, without providing a physical carrier with the Software concerned to the Customer.

‘Software’ (micro)computer programs (including SaaS) and/or websites, including any and all documentation and/or materials thereto. The software can be supplied in connection with or embodied in a Product. In such case the software is owned by, licensed to or otherwise used by Growficient, or any of its Group Companies.

‘Services’ all services, such as, but not limited to, design, consultancy, engineering, maintenance, manufacturing, operating and/or the realisation of a material work, to be performed by Growficient, as specified in the Specifications.

‘Specifications’ the detailed specifications, descriptions, design criteria, quality standards, work instructions and drawings of the Performance agreed upon between the Parties and specified in the Agreement.

‘Written’ or **‘in Writing’** includes by post, e-mail and any other electronic communication device or electronic data interchange customary in the market.

2. The headings of these GTC are for ease of reference only and are not intended to qualify the meaning of any Article or section thereof.

3. References to words denoting any gender shall include all genders.

4. Any undertaking by a Party not to do an act or thing shall be deemed to include an undertaking not to permit or suffer such act or thing to be done by another party.

5. References to the Parties include their respective successors in title and permitted assigns.

6. Terms and expressions of law and of legal concepts as used in this GTC have the meaning attributed to them under the laws of the Netherlands and should be read and interpreted accordingly.

Article 2. Applicability of the GTC

1. These GTC apply to all Offers, Purchase Orders and Agreements as well as to all related legal acts of the Parties.

2. The applicability of the Customer’s general purchase or other conditions is expressly rejected.

3. Any amendments of and/or addenda to these GTC have to be agreed upon in Writing by the Parties.

4. A failure by Growficient to exercise or a delay in exercising a right or remedy provided by these GTC or by law does not constitute a waiver of that right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by these GTC or by law by Growficient prevents further exercise of that right or remedy or the exercise of another right or remedy.

5. If one or more provisions of these GTC shall be found, by a court with jurisdiction, to be illegal, invalid or unenforceable, it shall not affect the legality, validity or enforceability of any of the remaining provisions of these GTC. The Parties agree to attempt to substitute for any illegal, invalid or unenforceable provision a legal, valid or enforceable provision that achieves to the greatest extent possible the objectives of the illegal, invalid or unenforceable provision.

6. These GTC do not derogate from Growficient's statutory and common law rights but are in addition thereto.

7. In the event of any contradictions between these GTC and the Agreement, the terms of the Agreement shall prevail.

8. This GTC consists of several chapters: Chapter I. GENERAL PROVISIONS, Chapter II. SUPPLEMENTARY PROVISIONS GOVERNING THE SUPPLY OF PRODUCTS, III. SUPPLEMENTARY PROVISIONS GOVERNING SAAS, and chapter IV. SUPPLEMENTARY PROVISIONS GOVERNING THE EXECUTION OF SERVICES. In the event of an incompatibility between any of the provisions of the different chapters, the most binding provision for the Customer shall prevail.

Article 3. Offers, Agreements and Notifications

1. All Offers of Growficient are non-binding and, unless otherwise declared by Growficient in Writing, valid for a period of 30 (thirty) days after the date thereof. Growficient reserves the right to withdraw or change its Offers without compensation as long as the Customer did not issue a Purchase Order yet.

2. No Purchase Order shall be binding on Growficient unless it has been confirmed by Growficient in Writing. Such Purchase Order confirmation shall constitute an Agreement.

3. If a Purchase Order is placed by the Customer without a prior Offer and the Customer takes delivery of the Performance, this shall in any case constitute as an Agreement under these GTC and as a confirmation of the Purchase Order. Additional arrangements shall require the Written approval of Growficient.

4. The Customer cannot derive any rights from oral commitments of Growficient, unless and to the extent those are confirmed in Writing by Growficient.

5. All notifications relating to the Agreement shall be made in Writing.

Article 4. Suspension and Dissolution

1. Growficient shall at all times be entitled to suspend the fulfilment of its obligations under the Agreement or to dissolve the Agreement, in the event that:

(i) the Customer does not timely and fully fulfil its obligations under the Agreement;

(ii) Growficient learns of circumstances giving good ground to fear that the Customer will not timely and fully fulfil its obligations under the Agreement. In such event suspension of the Agreement by Growficient shall only be allowed in so far the shortcoming justifies such action;

(iii) the Customer has been requested to furnish adequate security to guarantee the fulfilment of its obligations under the Agreement pursuant to **Article 8.7** and this security is not (sufficiently) provided.

2. Growficient shall furthermore be entitled to dissolve the Agreement if circumstances arise of such nature that fulfilment of Growficient's obligations becomes impossible or can no longer be expected in accordance with the requirements of reasonableness and fairness.

3. If the Agreement is dissolved pursuant to **Article 4.2**, Growficient's claims against the Customer shall be forthwith due and payable. If Growficient suspends fulfilment of its obligations, it shall retain its rights under the applicable law and the Agreement.

4. Notwithstanding the foregoing sub clauses of this **Article 4**,

Growficient shall always retain the right to claim damages in case of suspension or dissolution.

Article 5. Measurements, weights, images and technical data

1. The measurements, weights, dimensions, capacities, prices, technical data and images set out in Growficient's advertising material or website are approximate only. These data shall not be binding save to the extent they are expressly guaranteed in the Agreement.

2. The Customer guarantees the correctness, completeness and reliability of the data and information issued to Growficient by the Customer or on its behalf. Growficient shall not be required to check the correctness, completeness or reliability of this data issued to Growficient.

3. Growficient shall only be required to (further) implement the Agreement if the Customer has issued all data and information requested by Growficient.

4. If and in as much as Growficient suffers direct or indirect losses as a result of the fact that the data and/or information provided by the Customer are incorrect and/or incomplete, the Customer shall be required to fully compensate Growficient for those losses.

Article 6. Prices

1. As consideration for the execution of the Performance the Customer shall pay Growficient the price(s), which is calculated as specified in the Agreement.

2. Unless explicitly stated otherwise, prices are always stated exclusive VAT.

3. If taxes, levies or import duties which will increase prices are introduced or changed by any government measure, or other government measures are effected after the Agreement is concluded which result in an increase in the cost of the Performance, Growficient shall have the right to pass on this cost increase or the changes even if it had been agreed that prices would be fixed.

Article 7. Changes and additional work

1. If on the instructions of, or in agreement with, the Customer any change is made, any additional Products are delivered and/or extra Services are performed that are not included in the Agreement, the extra costs thereby incurred shall be charged by Growficient to the Customer as additional work at the then applicable charging rates. Insofar a fixed price has been agreed, Growficient shall on request inform the Customer in Writing about the financial consequences of the additional work or additional provisions of Products and/or Services as referred to in this **Article 7**.

Article 8. Payment

1. Unless explicitly agreed upon otherwise between the Parties in Writing, the Customer shall pay Growficient's invoices in Euro and in full without discount, withholding, set-off or counterclaim by means of transfer to the bank account of Growficient within the term as set out in the Agreement.

2. Contestation of an invoice by the Customer shall not suspend the fulfilment of its payment obligations.

3. The Customer is only entitled to offset- or retention rights if the Customer's counterclaims are legally established, uncontested or recognized by Growficient. Moreover, the Customer shall only be entitled to retention rights in relation to the original Agreement.

4. If the Customer fails to timely fulfil its payment obligations, the Customer shall be in default by operation of law and owe an interest charge equal to the statutory interest rate, however the interest rate owed shall in no event be lower than an interest of 1% (one percent) per month on the amount due and payable. The interest on the amount due and payable shall be calculated as from the date the Customer is in default. The foregoing shall be in addition to and not in lieu of any other rights and remedies Growficient may have at law or in equity for such default.

5. All judicial and extrajudicial costs related to the enforcement and collection of payments due by the Customer to Growficient and not received in time, shall be borne by the Customer.

6. In the event that: a) the Customer's company is wound up; b) the 'Wet Schuldsanering Natuurlijke Personen' (WSNP) is declared applicable (in case of a sole proprietorship); c) the owner of the Customer dies (in case of a sole proprietorship); d) the owner of the Customer is placed under conservatorship (in case of a sole proprietorship); e) the Customer's company is attached; f) the Customer's company is declared bankrupt; and/or g) a suspension of payment is granted to the company of the Customer, Growficient's payment claims against the Customer shall forthwith become due on Growficient's demand.

7. If the Customer does not properly fulfil its payment obligations, as well as in the event that Growficient for any reason whatsoever deems that the Customer will not properly fulfil its payment obligations, Growficient may at all time require adequate security from the Customer such as a bank or performance guarantee for the proper fulfilment of the Customer's payment obligations and suspend the execution of the Performance until such adequate security has been received. The Customer shall provide Growficient with any such requested adequate security at Growficient's first request.

Article 9. Liability

1. Unless otherwise agreed in Writing, Growficient's total liability due to an attributable failure in the performance of the Agreement or on any legal basis whatsoever, expressly including each failure to fulfil a warranty obligation agreed with the Customer, shall be limited to compensation for direct damage or loss up to a maximum of an amount equal to the total amount (excluding VAT) paid by the Customer under the Agreement for the Performance during the 12 (twelve) months prior to the occurrence of the event that gives rise to such liability. However, if the loss or damage is covered by Growficient's commercial liability insurance, the liability shall never amount to more than the amount actually paid out by the insurer.

2. Growficient shall not in any event be liable for indirect damage, including but not limited to, consequential damage, loss of profit, lost savings, harm to reputation and damage due to business stagnation.

3. Growficient shall not be liable for any losses if delivery of the Performance is not possible as a consequence of export restrictions, embargo's etc.

4. Growficient shall not be liable for the advice or recommendations issued by Growficient, unless this advice or recommendations are explicitly part of a specific Service.

5. Growficient shall explicitly not be liable for the (consequences of) non-conformities, errors or defects that remain unnoticed in the samples, models or examples approved or corrected by the Customer.

6. The limitations and exclusions of liability set out herein do not apply if the damage is caused by wilfulness, gross fault or gross negligence on the part of Growficient.

Article 10. Indemnity

1. The Customer indemnifies Growficient against all liability of Growficient to any third party by virtue of any technical working principles supplied or mandated by the Customer, and used by Growficient in the execution of the Performance. The examination of any infringement of third-party rights by virtue of the Customer supplied and mandated technical working principles shall be at the initiative and expense of the Customer. If there is any infringement of such third-party rights, Growficient shall respect such rights and as far as possible propose an alternative solution.

2. Unless under a non-appealable final judgement, it is decided that gross negligence or intention exists on the part of Growficient, the Customer shall indemnify and hold Growficient harmless from and against all claims and causes of action for damages and expenses of every kind and character including costs of suit and reasonable attorney's fees asserted against Growficient, its agents, servants and

employees arising out of or in any manner connected with the Performance or the use thereof.

3. The Customer shall indemnify Growficient, its employees and others insourced for implementation of the Agreement against any claim from third parties, including claims based on product liability in connection with the implementation of the Agreement by Growficient, irrespective of the cause, and against any resultant costs for Growficient.

4. Growficient warrants that, at the time of making the Offer to the Customer, it is not aware of any infringement of third-party Intellectual Property Rights, or other rights. If Growficient has manufactured and executed the Performance according to designs, drawings or other instructions from the Customer, then the Customer guarantees that this will not infringe any third-party Intellectual Property Rights, or other rights. In such case, the Customer indemnifies Growficient against any third-party claim alleging infringement of its Intellectual Property Rights.

5. The Customer will indemnify Growficient, its employees, Growficient's Group Companies and their employees against claims from third parties (also including administrative and/or criminal fines) including employees of Growficient or Growficient's Group Companies who suffer damage in connection with the implementation of the Agreement as a result of the actions or failure to act by the Customer and/or the inaccuracy or incompleteness of information or data issued by or on behalf of the Customer.

Article 11. Lapse of rights

1. Legal claims pursuant to the Agreement or unlawful acts must be instituted by the Customer within 1 (one) year of the right to the claim coming into force, in the absence of which the legal claim shall lapse.

Article 12. Intellectual Property Rights

1. Unless otherwise agreed in Writing between the Parties, the Customer acknowledges that Growficient retains ownership of any Intellectual Property Rights in the Performance, and in any plans, simulation models, Specifications, test models, images, schedules, designs, sketches, drawings, films, software and other material or (electronic) files (the "Information") made available or produced as part of the Performance and that the Customer shall have no rights of exploitation thereof, irrespective of the fact whether they have been handed over to the Customer or via the Customer to third parties and irrespective of whether the Customer charged Growficient for the production of such materials.

2. Unless the nature of the Information provided by Growficient to the Customer dictates otherwise, the Information shall be destined to be used by the Customer exclusively and shall not be copied or otherwise reproduced, publicly disclosed or disclosed to third parties by the Customer without Growficient's prior written consent. Further, the Customer may not use any part of the techniques illustrated in such Information to improve its own products. The Customer shall return the Information at Growficient's first request.

3. The Customer will not attempt to seek or claim any interest in Growficient's Intellectual Property Rights, or assist any other party to assert any interest in Growficient's Intellectual Property Rights. The Customer acknowledges that any improvement or enhancement of Growficient's Intellectual Property Rights which may result from work performed by the Customer under the Agreement shall remain the exclusive property of Growficient and the Customer irrevocably assigns to Growficient all right, title and interest the Customer may have in any improvements or enhancements, to Growficient's Intellectual Property Rights. The Customer will not hinder Growficient in any application or other measure taken by Growficient to protect or exploit improvements to Growficient's Intellectual Property Rights. Growficient shall have the exclusive right to file patent applications, in its own name or in the name of a third party designated by Growficient, for inventions made as part of carrying out of the Performance and Growficient shall give its full co-operation with respect to such patent applications.

Article 13. Ownership of Customer Data1. Notwithstanding anything to the contrary in this GTC, all Customer Data shall be solely owned by the Customer. Unless otherwise agreed in Writing, Growficient will not disclose any Customer Data to third parties or process any Customer Data, except:

- (i) if this is necessary to perform Growficient's obligations under the Agreement;
- (ii) if this is necessary for the maintenance of the SaaS;
- (iii) for internal purposes in order to improve the products and services within Growficient, and/or
- (ii) if this necessary to comply with any legal or regulatory requirement.

Notwithstanding the foregoing, Customer Data is and shall be the exclusive property of the Customer and shall be considered to be Confidential Information of the Customer.

2. To avoid uncertainty, Growficient warrants that Customer Data will not be sold to any third parties or be disclosed to third parties in any other way than described in this **Article 13**.

Article 14. Personal Data Protection

1. In collecting and (further) processing of personal data from or for the Customer in the framework of the Agreement, Growficient will comply with the obligations and shall take adequate protective measures as arising from Dutch laws regarding data protection and any other relevant (national, European and international) data protection regulations (the "**Privacy Laws**").

2. If in its own judgement Growficient must be considered to be a data processor as intended in the Privacy Laws, at the first request of Growficient, in addition to the provisions in this **Article 14**, the Customer will enter into and sign a data processing agreement with Growficient.

3. The Customer indemnifies Growficient against all claims from third parties (including at least users and government authorities), financial government sanctions and costs (including lawyer's fees) relating to these claims, that arise from a violation by the Customer of any Privacy Laws.

Article 15. Force majeure

1. Growficient shall not be liable for any failure to fulfil any terms of the Agreement to the extent that such fulfilment has been delayed, hindered, interfered with or prevented by any circumstance whatsoever which is not within its reasonable control and which amounts to an act of Force Majeure.

2. Growficient shall inform the Customer of all the circumstances and particulars which prevent Growficient from performing its obligations under the Agreement. Growficient shall consult the Customer about the measures to be taken in order to limit the consequences of the situation of Force Majeure to a minimum and to safeguard the execution of the Agreement.

3. Growficient shall exert its reasonable efforts to cure any event of Force Majeure to the extent that it is reasonably possible to do so and may at its option suspend performance of the obligation affected by the Force Majeure during the period such Force Majeure continues, without incurring any liability on account hereof.

4. If the Force Majeure continues for a period of more than 6 (six) consecutive weeks, then either Party shall be entitled to terminate the Agreement by Written notice to the other Party.

Article 16. Secrecy

1. The Parties shall be bound to secrecy of all of each other's Confidential Information and shall use the Confidential Information solely for the purpose of performing the Agreement or any other purpose as set out in these GTC.

2. The Parties will cause their officers, directors, employees, agents and Group Companies to abide by the terms of this **Article 16**. Each Party

will be responsible for any breach by its officers, directors, employees, agents and Group Companies of this **Article 16**.

3. If a statutory provision or a judicial decision compels Growficient to convey Confidential Information of the Customer to third parties designated by law or by the court and Growficient cannot for that purpose invoke a legal right to refuse to give evidence of such a right acknowledged or allowed by the competent court, Growficient shall not be held to pay damages or compensation and the Customer shall not be entitled to demand the dissolution of the Agreement on the ground of any damage resulting from said circumstance.

Article 17. Assignment and subcontracting

1. Growficient is at all times entitled to assign all or part of its rights and/or obligations under the Agreement to a Group Company or third party.

Article 18. Non-employment of Growficient's personnel

1. Throughout the term of the Agreement and for a period of 1 (one) year following the termination thereof, the Customer shall not in any way hire or employ in any other way, be it directly or indirectly, staff of Growficient, Growficient's Group Companies or of enterprises whom Growficient has engaged to execute the Agreement and who are/were involved in the execution thereof, without prior consent of Growficient on this matter.

Article 19. Applicable law and disputes

1. These GTC are construed in accordance with and governed exclusively by the laws of the Netherlands. The applicability of the 1980 Vienna Sales Convention is hereby excluded, as well as any other present or future terms of any international convention governing the purchase of moveable property, insofar as such terms can be excluded.

2. In case of any disputes arising out of or relating to these GTC, the Parties shall endeavour to settle such disputes amicably. If the Parties are unable to, the dispute shall be exclusively submitted to the jurisdiction of the competent courts of Rechtbank Oost-Brabant, the Netherlands.

CHAPTER II. SUPPLEMENTARY PROVISIONS GOVERNING THE SUPPLY OF PRODUCTS

The provisions of this Chapter II. shall apply in addition to the provisions of Chapter I. GENERAL PROVISIONS if Growficient (also) delivers Products, whether or not set out in more detail in one of the other chapters of these GTC.

Article 20. Intended use, suitability and compliance with government provisions

1. In identifying the intended use of the Product by the Customer, the Customer has sufficiently taken note of the feasibility of its objectives, the suitability of its system and the restrictions on the Product (including the Software). Growficient shall accept no liability in respect of the selection or suitability of the Products.
2. The Customer must confirm that the Product ordered or to be ordered by the Customer satisfy all government regulations imposed thereon in the country of destination, and are generally suitable for the use intended by the Customer. The use of the Product and compliance with government provisions shall be for the risk of the Customer.
3. The Customer guarantees that the Products purchased from Growficient shall only be used for the purpose for which Growficient sold the Products, taking account of and in accordance with the legislation and regulations applicable to the Customer and its activities. The Customer is required to provide all necessary cooperation, facilities and data for an inspection, examination or test to verify the obligations upon the Customer as set out in this **Article 20**, with regard to the use of the Products by the Customer and compliance with the legislation and regulations applicable upon the Customer and its activities.

Article 21. Delivery of Products

1. Unless otherwise agreed in Writing, Growficient shall deliver Products according to the Incoterm "Ex Works" (Incoterms 2010 or any later version thereof), on the delivery date or within the delivery term set out in the Agreement. Upon such delivery, the risk of loss of, or damage to, Products shall transfer from Growficient to the Customer. If at the request of the Customer Growficient also undertakes the transport of the Products to the Customer or has transport undertaken, Growficient shall do so for the account and risk of the Customer. The moment of risk transfer remains delivery "Ex Works". If Growficient organises the transport, the Customer is required to take receipt of the Products immediately following arrival at the destination. The SaaS will be made available in accordance with **Article 27**.
2. If i) the Customer refuses to take delivery of Products; ii) delivery has been proved impossible; or iii) the Customer fails to provide Growficient with the information or instructions necessary for the delivery to be carried out, Growficient shall be entitled to: a) store Products at the Customer's risk and expense; or b) withdraw from the Agreement; and to claim damages from the Customer for non-performance.
3. If Growficient has given a date or term of delivery it shall only be indicative and never constitute a term to be observed on penalty of forfeiture of rights. Growficient shall at all times use its reasonable efforts to deliver Products on said time. If Growficient expects a delivery term to be exceeded, it shall forthwith notify the Customer thereof in Writing. In such case, Growficient shall use its reasonable efforts to deliver the Products as soon as possible to the Customer and keep the Customer updated of the situation.
4. A failure to deliver Products within said time does not entitle the Customer to suspend or fail to comply with its contractual obligations or to claim damage.
5. The delivery term for the Products commences once Growficient has received all information required for such delivery from the Customer and all other necessary conditions for performance of the Agreement have been fulfilled. If there are circumstances of which Growficient was not aware at the time the delivery period was determined, such delivery period can be extended by Growficient up to a maximum period equal to 2 (two) times the initial delivery period.

6. Unless otherwise agreed upon in Writing, Growficient shall be entitled to deliver Products in partial shipments.

7. The Customer shall be obliged to provide the assistance and cooperation necessary and required by Growficient in order for or on behalf of Growficient to perform the delivery immediately, explicitly including the obligation to accept and take delivery of Products purchased.

Article 22. Right of use and restrictions on use in relation to Software

1. Growficient shall make the Software available to the Customer as a component part of the Product for the duration as set out in the Agreement on the basis of a non-exclusive, non-transferrable, non-pledgeable license for the intended purpose, and exclusively for use by the Customer.
2. Growficient is always entitled to take technical measures to protect the Software against unlawful use and/or against use in a manner or for purposes other than the manner or purposes agreed between the Parties. The Customer shall never remove or bypass technical measures intended to protect the Software or have such technical measures removed or bypassed.

Article 23. Inspection, complaints and acceptance (test)

1. If the Parties have not agreed an acceptance test, the Customer shall accept the Product in the state that it is in when delivered ('as is, where is'), therefore with all visible and invisible errors and defects, without prejudice to the Supplier's warranty obligations as set out herein. In the aforementioned case, the Product shall be deemed to have been accepted by the Customer upon delivery or, if installation by a Supplier has been agreed in writing, upon completion of installation.
2. If agreed between the Parties and laid down in a test protocol to the Agreement, an acceptance test shall be carried out by the Customer at the latest within fourteen days of receipt or installation of the Product. The acceptance test shall be limited to what has been expressly laid down in the test protocol. This protocol shall fix the modalities of the acceptance test.
3. If on carrying out the acceptance test the Product prove to fall short of the Specifications, the Customer shall inform the Supplier of the alleged defects via a written test report immediately after the test period. In such cases the Supplier shall remedy the reported defects within a reasonable period. If another acceptance test is carried out after the reported defects have been remedied, such test shall be limited to an examination with respect to the reported defects.
4. In the event that the acceptance test has successfully been carried out, the Customer shall promptly sign the acceptance certificate of the Supplier and the Product shall be deemed accepted by the Customer.
2. On forfeiture of all warranty claims, the Customer shall inspect Products or have them inspected immediately after the delivery thereof, but in any case within 14 (fourteen) days of the date of delivery. The Customer shall examine whether the quality and the quantity of the delivered Products comply with the Agreement. Sample testing shall also be performed if this can reasonably be expected of the Customer.
2. Any claim regarding the quantity of Products delivered must be noted at the time of delivery.
3. Visible shortcomings have to be communicated in Writing to Growficient within 14 (fourteen) days following the delivery of Products. Non-visible shortcomings also have to be reported in Writing within 14 (fourteen) days following their detection. Any such Written complaint should contain a precise description of the defect and detailed delivery information of Products such as delivery date and time, delivery note number and box number. Claims which are not filed in accordance with this procedure shall not be taken into consideration.
4. Complaints with regard to delivered Products do not relieve the Customer of its payment obligations.
5. Should the Customer fail to timely notify Growficient of any defective Products in accordance with this **Article 22**, Products shall be

considered accepted by the Customer and all warranties and remedies with regard to detected or detectable defects in Products shall be excluded.

6. If any delivery of Products contains negligible defects, the Customer shall accept such delivery.

7. If the Customer wishes to return defective Products, it shall do so following the prior Written consent of Growficient.

Article 24. Export control

1. The delivery of Products may be subject to laws, customs and export control regulations of the European Union. Each Party shall comply with such laws, customs and regulations and shall not export Products without first obtaining all required governmental authorizations or licenses. Notwithstanding anything to the contrary in these GTC or any Agreement, Growficient shall in no event be obliged to deliver any Products or perform any of its obligations under these GTC or any Agreement until the required approvals relating to the export regulations abovementioned have been obtained. Each Party agrees to provide the other Party with such information and assistance as may reasonably be required by the other in connection with securing such authorizations or licenses, and to take timely action to obtain all required support documents. Growficient shall be entitled to terminate the Agreement or part thereof, if the respective necessary approval(s) according to the applicable export regulations cannot be obtained within a reasonable time period. Complying with any export control regulations can never cause a default from Growficient.

Article 25. Warranty for Products

1. Growficient warrants the Products to be delivered in accordance with the Specifications. Growficient warrants the sound nature of the Software in accordance with the reasonable expectations of the Customer on the basis of the Agreement for the duration as set out in the Agreement (if relevant). Any other warranties shall only be issued by Growficient in Writing.

2. The warranty as described in **Article 25.1** applies to defects that appear under the conditions of operation provided for by the Agreement and in particular do not apply in any of the following cases:

- a) Products that have been altered or repaired by anyone other than Growficient without Growficient's prior Written consent;
- b) Products that have been damaged by circumstances beyond the reasonable control of Growficient;
- c) Products that have been improperly used or maintained by the Customer;
- d) Products that have been subjected to conditions of use and/or maintenance not in conformity with Growficient's instructions;
- e) Products that have been damaged by negligence or lack of caution of the Customer, by abuse, improper installation or application, or negligence in use, improper storage, transportation or handling, or Products which in any way have been tampered with;
- f) when an item is purchased by Growficient as a component part of the Products, except to the extent to which such item or items are covered by the warranty of the original manufacturer, if any.;
- g) when an item which is a component part of the Products has been furnished by the Customer to Growficient;
- h) defects which only marginally reduce the value or the suitability of the Products. A marginal defect exists in particular if the defect can be removed without significant effort by the Customer itself;
- i) normal wear and tear of the Products.

3. In the event that the Customer deems the Product to be defective, it shall, on forfeiture of all warranty claims, notify Growficient of all particulars thereof within 2 (two) weeks after discovering the alleged defect. However, the Customer is only entitled to claim under this warranty if it has complied with all its obligations towards Growficient during the warranty period as set out in the Agreement (if applicable).

4. If Growficient determines that the Product indeed is defective, Growficient shall, at its option:

- i) repair the defective Product in situ;
- ii) have the defective Product or parts thereof returned for repair;
- iii) replace the defective Product;
- iv) replace the defective parts of the Product in order to enable the Customer to carry out the necessary repairs at Growficient's expense and instructions; or
- v) credit the relevant portion of the Product related invoice accordingly.

Growficient shall at all times have the right to inspect the Product claimed to be defective and shall have the right to determine the cause of such alleged defect. In all cases the Customer must enable Growficient to repair any defect. The remedies set out in this **Article 25.4** shall be at Growficient's sole discretion.

5. Growficient is never obliged to recover data that has been corrupted or lost. Furthermore, the warranty as set out herein does not cover data conversion that is necessary as a result of repair or replacement or any transportation costs for return of Products and/or parts thereof, or for reshipment of any repaired or replaced Products and/or parts thereof. Furthermore, Growficient is never obliged to recover data that has been corrupted or lost.

6. Growficient does not have any obligation to install Software updates that may be necessary due to the fixing of errors that Growficient was obliged to carry out in accordance with this **Article 25**.

7. The warranty conditions laid down in this **Article 25** are in lieu of all other warranties, legal, express or implied, including but not limited to any warranties of merchantability or fitness for a particular purpose or against infringement, all of which are hereby expressly disclaimed. The Customer acknowledges that the remedies provided herein are exclusive and in lieu of all other warranties. The Customer assumes full responsibility for the use and application of the Products and accepts Growficient's design and material selection in placing its Purchase Order. Furthermore, unless agreed otherwise in Writing, the Customer acknowledges that the Products are intended to be used as a prototype/pilot. Growficient cannot assure that the desired objectives are achieved by means of the use of the Products .

7. For the avoidance of doubts, Growficient's total liability due to an attributable failure in the performance of a warranty obligation as set out in this **Article 25**, shall be limited to the provisions as set out in **Article 9**.

Article 26. Retention of title

1. Growficient retains ownership of the delivered Products, including designs, sketches, drawings, films, (electronic) files, and so forth, until the date on which the Customer has completely fulfilled its payment obligations under the Agreement. However, if and to the extent that this would be in favour of Growficient, shall be deviated from the previous regime pursuant to article 10:128 paragraph 2 DCC, stating that the legal consequences of a retention of title intended for export shall be governed by the law of the state of destination, if under such law the property rights do not cease to have effect, until the Product price is paid in full.

2. Until full payment of the Product price, the Customer shall not be authorised to pass on the Product to third parties for their use, to hire them out, pledge them, transfer title or otherwise to dispose of them or encumber them.

3. The Customer shall at its own expense insure the Products subject to retention of title and keep them adequately insured against all types of damages with an insurance company of financial repute, until the Customer has completely fulfilled its payment obligations. Growficient shall be the beneficiary of any indemnity which might be paid by the insurance company. On the request of Growficient the Customer shall make the respective insurance policy available for inspection as well as evidence of the payment of the insurance premiums.

4. If third parties seize Products subject to retention of title or wish to establish or assert a right to such Products, the Customer shall forthwith inform Growficient thereof.

5. If Growficient wishes to exercise its ownership rights under this

Article 26, the Customer shall give Growficient, or third parties appointed by Growficient, now for then, unconditional and irrevocable permission to access all of the locations where the Products are located in order for Growficient to take them back.

6. Demand for, or recovery of, Products or documents of title by Growficient shall not of itself discharge the Customer's liability to pay the whole of the agreed prices and take delivery of Products or Growficient's right to sue for the whole of the Product price. Growficient shall however in such case be entitled to dispose of said Products or to terminate the Agreement without any liability towards the Customer.

7. The Customer shall inform Growficient without delay regarding any obligation to register a retention of title in an official register or any other formal obligation necessary for the retention of title to be valid in the country where Products shall be delivered. The Customer shall at its own costs fully cooperate, assist and give all consents to Growficient regarding any formal obligation necessary to achieve a valid retention of title.

8. If the laws of the country in which Products are located after delivery do not permit Growficient to retain the title to said Products, but allow the retention of similar rights to the delivered Products, the Customer shall provide Growficient with such other equivalent right and shall assist Growficient in the fulfilment of any form requirements necessary for such purpose.

III. SUPPLEMENTARY PROVISIONS GOVERNING SAAS

The provisions of this Chapter III. shall apply in addition to the provisions of Chapter I. GENERAL PROVISIONS and Chapter II. SUPPLEMENTARY PROVISIONS GOVERNING THE SUPPLY OF PRODUCTS. In case of any contradictions, the provisions of this Chapter III. shall prevail.

Article 27. Delivery, installation and availability of SaaS

1. Growficient shall make the SaaS available on the date or within the term as set out in the Agreement.
2. At its discretion, Growficient shall deliver the SaaS on the agreed type of data carrier or, if no agreements have been made in this regard, on a type of data carrier determined by Growficient, or shall make the SaaS available to the Customer online.
3. At or following the end of the Agreement, Growficient shall not be obliged to provide assistance for the purpose of a data conversion desired by the Customer.
4. Growficient may continue to provide SaaS using a new or modified version. Growficient is not obliged to maintain, modify or add certain features or functionalities of the SaaS specifically for the Customer.
5. Growficient may temporarily put all or part of the SaaS out of operation for preventive, corrective or adaptive maintenance or other forms of service. Growficient shall not allow the period during which the SaaS is out of operation to last longer than necessary and shall ensure if possible that this period occurs outside office hours.

Article 28. Right of use and restrictions on use

1. Growficient shall make the SaaS available to the Customer for use of the Product for the duration as set out in the Agreement on the basis of a non-exclusive, non-transferrable, non-pledgeable license for use of the Product for the intended purpose, and exclusively for use by the Customer.
2. Growficient is always entitled to take technical measures to protect the SaaS against unlawful use and/or against use in a manner or for purposes other than the manner or purposes agreed between the Parties. The Customer shall never remove or bypass technical measures intended to protect the Software or have such technical measures removed or bypassed.

Article 29. Warranty provisions for SaaS

1. Growficient does not guarantee that the Software made available and held in the context of SaaS is free of errors and functions without interruption. Growficient shall make efforts to fix errors in the Software referred within a reasonable term if and insofar as the matter concerns Software developed by Growficient itself and the Customer has provided a detailed, written description of the defects concerned to Growficient. Growficient does not guarantee that defects in Software that it has not developed itself shall be fixed. Growficient is entitled to install temporary solutions, program bypasses or problem-avoiding limitations in the software. If the Software was developed on the instructions of the Customer, Growficient may charge for the costs of fixing to the Customer in accordance with Growficient's usual rates.
2. Based on the information provided by Growficient concerning measures to prevent and limit the effects of malfunctions, defects in SaaS, corruption or loss of data or other incidents, the Customer shall identify and list the risks to its organisation and take additional measures if necessary. Growficient declares that it is prepared to provide assistance, at the Customer's request, to the extent reasonable and according to the financial and other conditions set by Growficient, with respect to further measures to be taken by the Customer. Growficient is never obliged to recover data that has been corrupted or lost.
3. Growficient does not guarantee that the Software made available and held in the context of the SaaS shall be adapted to changes in relevant legislation and regulations on time.

Article 30. Maintenance services and new versions

1. Growficient shall only perform maintenance with respect to the Software in the context of SaaS if so agreed in writing.
2. Growficient is not obliged to make new versions of the Software in the context of SaaS available, unless this has been agreed otherwise in Writing.

CHAPTER IV. SUPPLEMENTARY PROVISIONS GOVERNING THE EXECUTION OF SERVICES

The provisions of this Chapter IV. shall apply in addition to the provisions of chapter I. GENERAL PROVISIONS and if applicable, Chapter II. SUPPLEMENTARY PROVISIONS GOVERNING THE SUPPLY OF PRODUCTS and Chapter III. SUPPLEMENTARY PROVISIONS GOVERNING THE SUPPLY OF SAAS if Growficient (also) provides Services, whether or not set out in more detail in one of the other Chapters of these GTC.

Article 30. Delivery of Services

1. The delivery term commences once Growficient has received all information required for such delivery from the Customer and all other necessary conditions for performance of the Agreement have been fulfilled. If there are circumstances of which Growficient was not aware at the time the delivery period was determined, such delivery period can be extended by Growficient up to a maximum period equal to 2 (two) times the initial delivery period.

2. Unless otherwise agreed upon in Writing, Growficient shall be entitled to deliver the Services in partial shipments.

3. The Customer shall be obliged to provide the assistance and cooperation necessary and required by Growficient in order for or on behalf of Growficient to perform the delivery immediately, explicitly including the obligation to accept and take delivery of the Services purchased.

Article 31. Performance, warranty and liability

1. Growficient shall perform its Services with care to the best of its ability and, if applicable, in accordance with the procedures as set out in the Agreement. All Services shall be performed on the basis of an obligation to use best endeavours, unless and insofar as Growficient has expressly promised a result in the Agreement.

2. If the Agreement is entered into with a view to performance by one specific person, Growficient shall always be entitled to replace this person with (a) person(s) who has the same and/or similar qualifications.

3. Growficient is not obliged to follow the Customer's instructions in the performance of its Services, particularly not if these instructions change or add to the scope of the agreed Services.