



# **GENERAL TERMS AND CONDITIONS.**

**VERSION 1.**  
**DATE October 2019**



**REMOTICOM**

## ARTICLE 1: DEFINITIONS.

In these general terms and conditions, the following terms are used in the following sense, unless otherwise indicated or the context dictates otherwise:

- 1.1 **Agreement:** any agreement between Remoticom and the Customer, any amendment or addition thereto, as well as (legal) acts in preparation and execution of that agreement.
- 1.2 **Assignment:** the agreed Activities as well as the agreed Product and the rest to be delivered by Remoticom on the basis of the Agreement.
- 1.3 **Business days:** Monday to Friday from 8:00 a.m. to 6:00 p.m., with the exception of public holidays generally recognised in the Netherlands.
- 1.4 **Customer:** the natural or legal person with whom Remoticom enters into an Agreement;
- 1.5 **Defect:** A defect exists if the Product delivered to the Customer by Remoticom or the Work performed by Remoticom is not complete and/or does not meet the specifications and/or does not possess the characteristic(s) that Remoticom has explicitly confirmed to the Customer in writing before or at the time of the conclusion of the Agreement.
- 1.6 **Documentation:** All product information, instructions, test certificates, price lists, folders and other information provided by Remoticom in an Offer or Agreement.
- 1.7 **Offer:** Any offer made by Remoticom to the Customer.
- 1.8 **Personal data:** All information about an identified or identifiable natural person (the data subject), as described in Article 4(1) of the GDPR.
- 1.9 **Product:** goods of a material nature or parts thereof delivered, created or made available by Remoticom for the execution of the Agreement, such as a device, semi-manufactured product, installation or other item.
- 1.10 **Remoticom:** the user of these general terms and conditions, being Remoticom B.V., or Remoticom Projects B.V. or Remoticom Services B.V. (each party separately hereinafter also referred to as "Remoticom") located at Kraaivenstraat 25-41, Tilburg and registered with the trade register of the Chamber of Commerce with respectively number 64892379, number 51964694 and number 61434523.
- 1.11 **Work:** The work performed by Remoticom for the Customer in the execution of the Agreement concerning the provision of services, insofar as this does not relate to the creation of a Product on behalf of the Customer. This may include, for example, carrying out research and development (R&D), carrying out feasibility studies, providing advice, developing, designing, building and supplying and/or adapting software, systems or operating systems, performing service and maintaining installation, configuration and adjustment activities, testing, inspection, etc.

## ARTICLE 2: GENERAL.

- 2.1 These general terms and conditions apply to all offers and Agreements between Remoticom and the Customer. Deviations from and additions to these general terms and conditions are only valid if they have been agreed in writing between the parties.
- 2.2 The applicability of the Customer's purchasing and other conditions is expressly rejected.
- 2.3 Only employees of Remoticom who are authorized to do so according to the trade register of the Chamber of Commerce, are authorized to perform legal acts on behalf of Remoticom. Legal acts performed by persons other than those authorised to do so by the commercial register may not be invoked against the party on whose behalf these legal acts were performed, unless Remoticom has confirmed these legal acts in writing.
- 2.4 If one or more of the provisions of these general terms and conditions are null and void or should

be annulled, the other provisions of these general terms and conditions will remain fully applicable. Remoticom and the Customer will then consult with one another in order to agree on new provisions to replace the null and void or annulled provisions, whereby if and insofar as possible the purpose and purport of the original provision will be taken into account.

### **ARTICLE 3: OFFERS, QUOTATIONS AND THE CONCLUSION OF THE AGREEMENT.**

- 3.1 Agreements become binding only when confirmed in writing by Remoticom.
- 3.2 All offers, quotations, price lists and other expressions of Remoticom are without obligation, unless indicated otherwise by Remoticom.
- 3.3 If the acceptance deviates (on minor points) from the Offer, Remoticom is not bound by it. The Agreement will then not be concluded in accordance with this deviating acceptance.
- 3.4 The Customer guarantees that in connection with the Agreement he has provided all information requested by Remoticom and other information relevant to the execution of the Agreement in a complete and truthful manner.
- 3.5 Promises, communications and agreements of or with Remoticom that relate to obligations of Remoticom and are made by employees or representatives of Remoticom are only binding on Remoticom insofar as they have been confirmed by Remoticom in writing.
- 3.6 Obvious errors or mistakes on the website, in offers, quotations and/or other publications of Remoticom do not bind Remoticom.

### **ARTICLE 4: RATES.**

- 4.1 Unless stated otherwise in the Offer or Agreement, all prices are in euros and exclusive of VAT, exclusive of import duties and other levies, taxes and excise duties, exclusive of packaging costs, exclusive of insurance costs and exclusive of disposal fee(s).
- 4.2 All pre-calculations and budgets issued by Remoticom are indicative only, unless Remoticom indicates otherwise in writing. The Customer can never derive any rights from a pre-calculation or estimate provided by Remoticom.
- 4.3 Remoticom's data are decisive for the determination of the amounts due, unless the Customer proves that these data are not correct.
- 4.4 In the event of an Agreement involving a periodic payment obligation on the part of the Customer, Remoticom is entitled to adjust the applicable rates by means of a written notification within a period of at least three months.
- 4.5 Remoticom is in all cases entitled to adjust the agreed prices and rates by means of a written notification to the Customer for performances which, according to the relevant schedule or according to the Agreement, will be delivered at a time that is at least three months after the date of such notification.
- 4.6 If the Customer does not wish to agree to the price change as referred to in the fourth and fifth paragraphs, the Customer shall be entitled to terminate the Agreement in writing within thirty days of the notification, with effect from the date on which the change would take effect. The Customer is not entitled to dissolve the agreement if the power to increase a tariff or the price results from a power under the law.
- 4.7 Remoticom reserves the right to correct the rates for Products and Work for inflation each calendar year based on the CBS Consumer Price Index of the previous calendar year. The right to give notice of termination as set out in the sixth paragraph shall not apply to rate increases resulting from inflation adjustments.

**ARTICLE 5: PAYMENT.**

- 5.1 Invoices will be paid by the Customer in accordance with the payment conditions specified in the Offer or on the invoice. If no specific conditions are stated on the invoice, the Customer shall pay within fourteen (14) days of the invoice date. The value date on which a payment is received, as indicated on the bank statements of Remoticom, is the date on which the payment is made.
- 5.2 In the absence of specific payment conditions, the Customer shall adhere to the following payment conditions:
- a) 40% upon assignment, this must be received before Remoticom starts its Work
  - b) or delivers Products, as the case may be;
  - c) 40% upon delivery of the Products or Work;
  - d) 20% within fourteen (14) days of invoicing.
- 5.3 In the case of delivery of Products only, the latter 40% and 20% coincide.
- 5.4 If the Customer fails to pay Remoticom on time, the Customer will be in default without further notice of default. The Customer shall then owe statutory interest. The interest on the amount due and payable will be calculated from the moment the Customer is in default until the moment of payment of the full amount. All extrajudicial (collection) costs (including the costs incurred in drawing up and sending reminders, conducting settlement negotiations and other actions in preparation for potential legal proceedings), as well as judicial costs, shall be borne by the Customer.
- 5.5 Payments made by the Customer always serve to settle all interest and costs owed and then to settle due and payable invoices that have been outstanding the longest, unless the Customer explicitly states in writing upon payment that the payment relates to a later invoice.
- 5.6 Objections to invoiced amounts must be made in writing to Remoticom within thirty days after the invoice date. After the expiry of that date, the Customer is deemed to have agreed to the amount stated on the invoice.

**ARTICLE 6: CONFIDENTIALITY AND TRANSFER OF STAFF.**

- 6.1 Both parties are obliged to maintain the confidentiality of all confidential information that they have obtained from each other or from another source within the framework of their Agreement. Information is deemed to be confidential if the other party has indicated this or if this results from the nature of the information. This applies, among other things, to Documentation, software, equipment and other materials made available by Remoticom. The party receiving confidential information shall use it only for the purpose for which it was provided. Both parties shall oblige their personnel and any third parties in writing to comply with these provisions.
- 6.2 The Customer is only permitted to use Documentation to the extent necessary for the execution of the Agreement. At the first request of Remoticom, the Customer must immediately return all Documentation provided to him to Remoticom.
- 6.3 If, on the basis of a statutory provision or a judicial decision, Remoticom is obliged to supply confidential information to third parties indicated by law or competent court, and if Remoticom is unable to invoke a legal right to refuse to give evidence or a right to refuse to give evidence recognised or permitted by the competent court, Remoticom will not be obliged to pay damages or compensation and the Customer will not be entitled to terminate the Agreement on the grounds of any damage that may have occurred as a result of this.
- 6.4 Neither of the parties will mention (the details of) their Agreement in publications or advertisements without the written consent of the other party.
- 6.5 During the term of the Agreement as well as one year after its termination, the parties will only employ

employees of the other party who are or have been involved in the execution of the Agreement, or employ them otherwise, directly or indirectly, with the prior written consent of the other party. Conditions may be attached to such permission.

**ARTICLE 7: INTELLECTUAL PROPERTY RIGHTS.**

- 7.1 All intellectual property rights to the Products delivered, developed or made available to the Customer under the Agreement, including Documentation, Products delivered or made available by Remoticom and/or Work performed, are vested exclusively in Remoticom or its licensors or suppliers. The Customer only acquires the non-exclusive and non-transferable rights of use for the specific application for which the delivery was intended. For the rest, he will not reproduce the Documentation, Products or Work or make copies thereof.
- 7.2 If Remoticom is willing to commit to the transfer of an intellectual property right, such a commitment can only be made explicitly and in writing. If the parties agree in writing that an intellectual property right in respect of Documentation, Products or Work specifically developed for the Customer will be transferred to the Customer, this does not affect Remoticom's right or ability to use and/or exploit the parts, algorithms, Documentation, works, programming languages, protocols, standards and the like underlying that development for other purposes, without any limitation, either for itself or for third parties. Nor does the transfer of an intellectual property right affect the right of Remoticom to make developments for itself or a third party that are similar or derived from those that have been or will be made for the benefit of the Customer.
- 7.3 The Customer is not permitted to remove or change any indication concerning copyrights, trademarks, trade names or other intellectual property rights from the Documentation, Products or Work, including indications concerning the confidential nature and secrecy of the Documentation, Products or Work.
- 7.4 Remoticom is allowed to take technical measures to protect the Documentation, Products or Work. If Remoticom has secured the Documentation, Products or Work by means of technical protection, the Customer is not permitted to remove or circumvent this protection. If the security measures result in the Customer being unable to make a back-up copy of the Documentation, Products or Work, Remoticom will make a back-up copy available to the Customer at the Customer's request.
- 7.5 In the unlikely event that the Documentation, Products or Work delivered by Remoticom to the Customer in the Netherlands infringe an intellectual property right of a third party, and the Customer is held liable for this, the Customer is obliged to inform Remoticom of this in writing without delay. In that case, Remoticom is entitled, at its own discretion, to rectify this infringement by:
- providing the Customer with the right to use the delivered Product or the Work, or
  - changing the delivered goods in such a way that they are no longer infringing, or
  - replacing the delivered goods in such a way that they are no longer infringed, or
  - refunding the purchase price to the Customer after the Product or Work delivered has been returned by him, after deduction of a reasonable compensation for the period that the Customer has had the Product or Work delivered at his disposal.
- The content of a potential legal claim and the handling of the case, including the making of possible settlements, will be left entirely to Remoticom by the Customer. With regard to an infringement of intellectual property rights outside the Netherlands and/or in the event that the Product delivered by Remoticom or the Work carried out by Remoticom has not been developed by Remoticom itself, the Customer will not be able to assert any claim against Remoticom and will have no claim whatsoever against Remoticom.
- 7.6 Remoticom is not liable for the infringement of any intellectual property rights resulting from:
- Any change in or to the Product or Work sold or delivered by or on behalf of Remoticom;

- Any use or application of the Product or Work delivered by Remoticom other than as prescribed by Remoticom or as may be assumed by Remoticom on the basis of the Agreement;
  - Integration, use or application with Products not sold or delivered by or on behalf of Remoticom, including (parts of) systems and networks;
  - a software modification that has not been made by or on behalf of Remoticom.
- 7.7 The Customer guarantees that no rights of third parties preclude the provision to Remoticom of hardware, software or materials for the purpose of use, processing or installation. The Customer shall indemnify Remoticom against any claim based on the allegation that such making available, use or processing violates any right of third parties.

## **ARTICLE 8: IMPLEMENTATION OF THE AGREEMENT .**

- 8.1 Remoticom itself determines the way in which and by whom (including third parties as subcontractors) the Agreement will be executed and will inform the Customer about this as much as possible if requested to do so. If it has been agreed that deliveries will take place in stages, Remoticom is entitled to postpone deliveries that belong to a subsequent stage until the Customer has approved the preceding stage(s) in writing.
- 8.2 Only in the event that this has been agreed upon in writing, is Remoticom obliged to follow the Customer's instructions in a timely and responsible manner during the execution of the Agreement. Remoticom is not obliged to follow instructions that change or supplement the content or scope of the agreed service. If, however, such instructions are followed, the relevant Work will be reimbursed in accordance with Article 15 of the General Terms and Conditions.
- 8.3 The Work to be performed by Remoticom has the character of an obligation to make an effort, unless it has been explicitly agreed that they have the character of an obligation to achieve a result and the intended result has been described with sufficient certainty with due observance of the provisions of the following paragraph. Remoticom will execute the Agreement to the best of its knowledge and ability and in accordance with the requirements of good craftsmanship. This is based on the state of the art known at the time.
- 8.4 The parties may agree in writing that Remoticom must achieve a concrete result with the execution of the Assignment. An obligation to achieve a result only exists if the following conditions are met:
- All design data required by Remoticom that are important for achieving the agreed result must be reported by the Customer to Remoticom and confirmed by Remoticom to the Customer before or during the conclusion of the Agreement;
  - After the Agreement has been concluded, Remoticom is of the opinion that the information, data and circumstances referred to in the previous point have not been changed in a detrimental way;
  - The criteria on the basis of which and the circumstances in which it is assessed whether the agreed result has been achieved shall be crystal clear and objectively measurable in the agreed manner;
  - The way in which the parties determine whether the agreed result has been achieved must be confirmed in writing by Remoticom to the Customer before or at the time of the conclusion of the Agreement.
- Insofar as the parties have agreed on an obligation to achieve a result but the conditions for this have not been fully met, the Agreement has the character of a best-efforts obligation insofar as, in Remoticom's opinion, the guaranteed result could not be achieved as a result of non-compliance with the conditions referred to above.
- 8.5 Remoticom is only obliged to (further) execute the Agreement if the Customer has provided the data

and information requested by Remoticom, in the form and manner desired by Remoticom.

- 86 If an Assignment Agreement has been entered into with a view to the performance of Work by a specific person, Remoticom will at all times be entitled to replace this person by one or more other persons with the same qualifications. Section 7:404 of the Dutch Civil Code is expressly excluded.
- 87 Remoticom is entitled at any time, without prior notice, to (temporarily) block access to Work or Products or to (temporarily) disable certain functions of the Work or the Product, to the extent that this is necessary for maintenance or the performance of (necessary) updates/improvements. If the temporary unavailability of the Work or the Product is not unreasonably long, the Customer is not entitled to compensation from Remoticom. Remoticom makes every effort to limit the inconvenience to an absolute minimum in these cases and will - if possible - inform the Customer in good time.

#### **ARTICLE 9: AMENDMENT OF THE AGREEMENT.**

- 9.1 If, during the execution of the Agreement, it appears that it is necessary to amend or supplement the Agreement in order to ensure proper execution, the parties shall amend the Agreement accordingly in good time and in mutual consultation. An amendment to the Agreement can only be agreed in writing. If the Parties have reached agreement on a particular amendment to the Agreement, Remoticom will confirm the amendment to the Customer in writing.
- 9.2 If the parties agree that the Agreement will be amended or supplemented, this may affect the time of completion of the execution. Remoticom will notify the Customer as soon as possible. If the amendment or supplement to the Agreement will have financial and/or qualitative consequences, Remoticom will notify the Customer in advance.

#### **ARTICLE 10: WARRANTY.**

- 10.1 When executing an Order as referred to in article 8, Remoticom can only guarantee that a delivered Product, at the time of delivery, complies with the product specifications and that it possesses the properties that were confirmed to the Customer in writing by Remoticom before or at the time of the conclusion of the Agreement.
- 10.2 Remoticom only guarantees that a delivered Product will function and/or perform in a certain way in combination with goods delivered by third parties and/or in combination with goods of the Customer (e.g. in a machine or installation of the Customer), insofar as this has been explicitly confirmed to the Customer in writing by Remoticom before or during the conclusion of the Agreement. Such a guarantee lapses at the moment that, after delivery, it appears that there are circumstances that, in the opinion of Remoticom, negatively affect the functioning of the Product and that have not already been reported by the Customer to Remoticom before or at the time of the conclusion of the Agreement and have been confirmed in writing by Remoticom. Insofar as not agreed otherwise, the warranty referred to in this article shall lapse after twelve (12) months after delivery.
- 10.3 Unless other warranty periods are specified in the Quotation, the warranty for new Products is twelve (12) months after delivery.
- 10.4 If the Customer discovers a Defect and wishes to make a claim on the warranty concerning the defective delivery, the Customer must immediately report the Defect in writing to Remoticom, on pain of forfeiture of rights. Notification of the Defect must take place in accordance with the RMA procedure, which can be consulted on the website of Remoticom.
- 10.5 Products that qualify for warranty must be delivered by the Customer to Remoticom at his own expense. Any costs related to installation and removal, waiting time, packaging and insurance shall

- be borne by the Customer.
- 10.6 If, in the opinion of Remoticom, there is indeed a Defect attributable to Remoticom and the Customer is entitled to a warranty under this article, Remoticom will, at his own discretion, either take care of the repair of the Defect or the replacement of the defective Product. Remoticom is free to outsource the repair of a Defect to a third party.
- 10.7 Remoticom has the right to charge for investigation costs, if in the opinion of Remoticom the Product does not show any Defects after an inspection, or if the Customer is not entitled to a guarantee.
- 10.8 The warranty obligation is void if any faults in a Product or its parts are the result, in whole or in part, of incorrect, careless or incompetent use, the Product is or has been used for purposes other than those for which it is intended, if the alleged Defect is the result of wear and tear as a result of normal use, if the Defect is the result of external causes such as fire or water damage, if items have been made available for processing by the Customer, if a software adaptation or upgrade has been made with respect to the Product that has not been made by Remoticom itself or by a third party designated by Remoticom, or if the Customer has made changes to a Product without permission from Remoticom that have been delivered in the context of the warranty. Furthermore, an agreed warranty obligation shall explicitly not apply to batteries and/or related items that are subject to natural wear and tear over time.
- 10.9 To the extent that Remoticom is obliged during the warranty period to compensate damage or costs suffered by the Customer as a result of a Defect, the fulfilment of the warranty obligation by Remoticom is considered to be the only and full compensation.

**ARTICLE 11: OBLIGATIONS OF THE CUSTOMER.**

- 11.1 The Customer shall ensure that all information, equipment and rooms that Remoticom indicates are necessary or that the Customer should reasonably understand to be necessary for the execution of the Agreement, are provided to Remoticom in a timely manner.
- 11.2 If information necessary for the execution of the Agreement is not available to Remoticom, or is not available on time or in accordance with the agreements made, or if the Customer fails to fulfil his obligations in any other way, Remoticom is in any case entitled to suspend the execution of the Agreement and is entitled to charge the costs incurred as a result in accordance with its usual rates.
- 11.3 The Customer is obliged to notify Remoticom immediately of facts and circumstances that may be relevant in connection with the execution of the Agreement.
- 11.4 The Customer bears the risk of the selection, use, application and management in his organisation of the equipment, software, data files and other Products and materials and of the Work to be delivered by Remoticom. The Customer himself is responsible for the correct installation, assembly and commissioning and for the correct settings of the equipment, software, data files and other Products and materials.
- 11.5 If employees of Remoticom perform Work at the location of the Customer, the Customer will provide, free of charge, the facilities reasonably required by those employees, such as - if applicable - a workspace with telecommunication facilities, etc. The Customer shall indemnify Remoticom against claims by third parties, including employees of Remoticom, who, in connection with the execution of the Agreement, suffer damages resulting from the actions or omissions of the Customer or from unsafe situations in his organisation.
- 11.6 The Customer must refrain from behaviour that makes it impossible for Remoticom to execute the Agreement properly. Furthermore, the Customer shall provide all reasonable cooperation in order to be able to deliver the Products and/or perform the Work and to be able to check and guarantee the proper functioning of the Work.



- 11.7 If the Customer does not provide Remoticom with the information, Documentation, equipment, software, materials or employees that are useful, necessary or desirable for the execution of the Agreement, or does not provide Remoticom with such information, documentation, hardware, software, materials or employees on time or in accordance with the agreements, or if the Customer otherwise fails to fulfil his obligations, Remoticom has the right to suspend the execution of the Agreement in whole or in part, and Remoticom also has the right to charge the costs incurred as a result of this in accordance with its customary rates, without prejudice to Remoticom's right to exercise any other statutory and/or agreed right.

**ARTICLE 12: DELIVERY TIMES.**

- 121 Remoticom can include an estimated delivery time in an offer. After the Agreement has been concluded, Remoticom will, at the request of the Customer, verify and confirm the estimated delivery time to the Customer. The verified delivery time may differ from the estimated delivery time in the offer. Neither the estimated delivery time nor the verified delivery time will ever be considered as strict deadlines.
- 122 If a term is exceeded, Remoticom will not be in default. If during the execution of the Agreement a delay occurs for whatever reason (including causes for which Remoticom and/or its suppliers are responsible), the terms will be extended by as many days as the delay has amounted to. This also applies if the delay is the result of circumstances that were already foreseeable at the time the Agreement was concluded.

**ARTICLE 13: DELIVERY OF PRODUCTS, ACCEPTANCE AND TRANSFER OF RISK.**

- 131 Delivery of Products or the performance of Work in the Netherlands takes place at the (delivery) address indicated by the Customer.
- 132 If it is not possible to deliver at the agreed time due to circumstances on the part of the Customer, the costs incurred as a result will be borne by the Customer.
- 133 Any shipping or transport costs will be charged separately to the Customer.
- 134 Unless agreed otherwise, the Customer will assess the Product or the Work against the agreed test criteria within the test period of 8 (eight) Business Days from the moment Remoticom has made it known that the Product or the Work is ready to be purchased.
- 135 If, during the test period, it appears that there is a Defect in respect of the Product delivered or the Work performed by Remoticom, the Customer will notify Remoticom of this in writing without delay and in as much detail as possible. In such a case, the test period shall be interrupted for as long as the Product or the Work are again offered for acceptance.
- 136 The test criteria should preferably be agreed in writing between the parties before or at the time of the conclusion of the Agreement. Test criteria should be objective and measurable at all times. Criteria agreed upon later are only applicable if they have been confirmed to the Customer in writing by Remoticom. The Customer can never rely on the fact that the Product or the Work does not comply with certain requirements that do not form part of the test criteria. If the test criteria are not met, a Defect will be deemed to exist, with due observance of the provisions of Articles 8 and 10 of these General Terms and Conditions.
- 137 Products or Work are deemed to have been accepted and purchased at the first of the following moments:  
The moment at which the Customer has inspected the Product or the Work in accordance with the

agreed test criteria and/or has signed the delivery protocol and has not identified an essential Defect; The moment at which the test procedure, as referred to in the first paragraph, has expired, counting from the moment that Remoticom has notified the Customer that the Product or the Work is ready to be purchased;

The moment at which the Customer has used the Product or the Work operationally.

- 138 An essential Defect as referred to in this article should be understood as a shortcoming that in the opinion of Remoticom stands in the way of normal operation or normal use in a noteworthy manner. Minor defects, including those that do not significantly affect the most important functionalities, will not prevent delivery. Remoticom is required to repair non-essential Defects as soon as possible. A non-essential Defect shall not entitle the Customer to refuse to accept the Product or the Work, to dissolve the Agreement in whole or in part or to suspend payments.
- 139 Advice, provided information and/or suggestions of Remoticom regarding use, commissioning, installation, etc. only have the character of a warranty, when this has been explicitly agreed upon, taking into account the provisions of articles 8 and 10.
- 13.10 The risk of loss of or damage to Products shall pass to the Customer upon arrival or, if it has been agreed that the Customer shall sign a delivery note, at the time the delivery note is signed. Delivery of Products by Remoticom outside the Netherlands takes place Ex Works (INCOTERMS 2018).

#### **ARTICLE 14: PREVENTION OF DAMAGE, NOTIFICATION OF DEFECT.**

- 14.1 In fulfilling the Agreement, the Customer shall exercise the care that may reasonably be expected of him.
- 14.2 The Product delivered by Remoticom can be used in processes or installations of the Customer. The way in which the Product supplied by Remoticom is installed or used, the circumstances under which the Product is used and the specific requirements placed on the Product are generally not fully known to Remoticom. If the Product delivered by Remoticom starts to show a Defect, this can cause damage for the Customer. This damage largely depends on the way in which the processes and installations of the Customer are organised and to which those processes are used in installations. Important factors include the manner and speed of monitoring, redundant or otherwise, frequency and depth of inspections, types and method of alerting in the event of malfunctions, supervision, quality of maintenance etc. As all the above-mentioned parameters are within the domain of the Customer, the Customer is responsible for taking adequate measures to prevent unnecessary or unnecessarily high damage in case a Product delivered by Remoticom breaks down.
- 14.3 The Customer must immediately report a Defect to Remoticom in writing after he has become aware of it or could or should reasonably have become aware of it if he had taken adequate measures as referred to in the second paragraph. The notification of the Defect must be so concrete that it is sufficiently clear to Remoticom what the nature of the Defect is and what actions can reasonably be expected of him.

#### **ARTICLE 15: INCREASE/DECREASE IN WORK.**

- 15.1 If Remoticom, at the request or with the prior consent of the Customer, has performed Work or other performances that fall outside the scope of the Agreement or the agreed services, these Work or performances will be reimbursed by the Customer to Remoticom in accordance with Remoticom's usual rates. However, Remoticom is not obliged to comply with such a request and may require that a separate written Agreement be concluded for this purpose.

- 15.2 The Customer accepts that the Work or performance as referred to in the first paragraph of this article may affect the agreed or expected time of completion of the services and the mutual responsibilities of the Customer and Remoticom.
- 15.3 Insofar as a fixed price has been agreed for the Work or other performances and the parties intend to enter into a separate Agreement with regard to additional Work or performances, Remoticom will notify the Customer in advance in writing of the financial consequences of such additional Work or performances.

**ARTICLE 16: CALL-OFF ORDERS.**

- 16.1 Parties may agree that the Customer shall purchase a certain quantity of Products within a certain period of time and that the Customer shall purchase this quantity in more than one separate delivery, according to a concrete call-off schedule. This appointment is hereinafter referred to as the "call-off order". Remoticom is entitled to invoice separate deliveries.
- 16.2 If a call-off order has been agreed upon, Remoticom will offer the separate partial deliveries on the agreed delivery dates, without any action on the part of the Customer being necessary.
- 16.3 A change in the call-out schedule is only effective after the changed delivery dates have been confirmed to the Customer in writing by Remoticom.
- 16.4 If the change in the call-out schedule will have financial consequences, for example as a result of having to keep Products in stock longer than if the original call-out schedule had been followed, Remoticom will inform the Customer about this in advance.

**ARTICLE 17: RETENTION OF TITLE AND SECURITY RIGHTS.**

- 17.1 All Products or Work delivered by or on behalf of Remoticom will remain the property of Remoticom until such time as the Customer has fulfilled all his due and payable claims against Remoticom under all Agreements concluded with Remoticom.
- 17.2 If the Customer creates a new item (partly) from the Products delivered by Remoticom, the Customer will only create this item for Remoticom and the Customer will keep the newly created item for Remoticom until the Customer has paid all amounts due pursuant to the Agreement. In that case, Remoticom has all rights as owner of the newly created good until the moment of full payment by the Customer.
- 17.3 As long as the ownership or rights of the Products delivered by Remoticom have not been transferred to the Customer, the Customer may not pledge or encumber the Products or grant a third party any other right in respect thereof.
- 17.4 If third parties seize the Products delivered under retention of title or wish to establish or assert rights to them, the Customer is obliged to notify Remoticom of this as soon as may reasonably be expected.
- 17.5 The Customer undertakes to insure the Products delivered under retention of title and to keep them insured against fire, explosion and water damage as well as against theft and to make the policy of this insurance available for inspection at first request. In addition, the Customer shall keep the Products separated from other items in such a way that they can be easily and clearly identified as Remoticom's items.
- 17.6 In the event that Remoticom wishes to exercise its property rights as referred to in this article, the Customer hereby gives its unconditional and irrevocable permission to Remoticom or third parties to be appointed by Remoticom to enter all those places where the property of Remoticom is located

and to take back those Products.

- 17.7 Remoticom may retain items, products, property rights, data, documents, data files received or generated within the framework of the Agreement, despite an existing obligation to surrender them, until the Customer has paid all amounts due to Remoticom.
- 17.8 At the first request of Remoticom and at the Customer's expense, the Customer will cooperate in the establishment of an undisclosed pledge on newly formed items as referred to in the second paragraph, in which items delivered by Remoticom have been processed, as long as the Customer has not yet fulfilled all his obligations towards Remoticom.

## **ARTICLE 18: LIABILITY.**

- 18.1 Except in case of intent or gross negligence by the management of Remoticom and with due observance of the other provisions of these general terms and conditions, Remoticom is only obliged to compensate the Customer for the damage suffered as a result of an attributable shortcoming or wrongful act on the part of Remoticom. The obligation to compensation for damage shall not arise before all the following conditions have been fulfilled:
- The Customer must report the Defect to Remoticom in the manner described in article 14;
  - Remoticom must be in default;
  - The damage must be attributable to Remoticom;
- The Customer has made it sufficiently clear that he has taken adequate precautionary measures to prevent or limit the damage as referred to in Article 14.
- 18.2 Remoticom is in default during the period that the performance fails to take place after it has become due and the requirements as stated in this article have been met, except in so far as the delay cannot be attributed to Remoticom or compliance is, in Remoticom's opinion, already permanently impossible.
- 18.3 The default as referred to in the second paragraph will only come into effect when Remoticom has received a written notice of default in as much detail as possible, giving him a reasonable period of time in which to fulfil his obligations and if he fails to fulfil his obligations within this period. In order to determine a reasonable period of time, account must in any case, but not exclusively, be taken of the delivery periods applicable at the time of the notice of default, production lead times and the duration of any transport.
- 18.4 Remoticom's total liability for an attributable failure to execute the Agreement or for any other reason, explicitly including any failure to perform a warranty obligation agreed with the Customer, is limited to compensation for direct damage up to a maximum of the amount involved in the Agreement (excluding VAT). If the Agreement is a continuing performance agreement with a term of more than one year, the amount involved in the Agreement will be set at the total of the fees (excl. VAT) stipulated for one year. In no case, however, will the total liability of Remoticom for direct damage, for whatever reason, amount to more than €500,000 (five hundred thousand Euros).
- 18.5 Direct damage is exclusively understood to mean damage as a result of:
- Death or personal injury;
  - Damage to the Customer's property;
  - A violation of intellectual property rights of the Customer or third parties with due observance of the provisions of Article 7;
  - The reasonable costs that the Customer would have to incur in order to have the Remoticom service meet the Agreement.
  - The costs incurred by the Customer for keeping his old system and related facilities operational for a longer period of time because Remoticom did not deliver on a delivery date that was

- binding for him, less any savings resulting from the delay in delivery;
  - Reasonable costs incurred to determine the cause and extent of the damage, insofar as the determination relates to direct damage within the meaning of these general terms and conditions;
  - Reasonable costs incurred to prevent or limit the damage, insofar as the Customer demonstrates that these costs have led to the limitation of direct damage within the meaning of these general terms and conditions.
- 18.6 The liability of Remoticom is excluded for any damage other than the direct damage as defined in the previous paragraph of this article and consisting of indirect damage or consequential damage, which in any case is understood to mean:
- Damage other than the damage to Remoticom to repair the direct consequences of the non-compliance;
  - Damage due to loss of profit, production stoppage, destruction or deterioration of goods as a result of production stoppage, missed savings, business stagnation, mutilation, destruction or loss of data or due to reduced goodwill;
  - Shortcomings in the services of third parties, including providers of telecommunications networks and the non-functioning of telecommunications services provided by them as a result of (temporary) physical limitations, maintenance or force majeure, among other things;
  - Damage as a result of claims from third parties, including customers of the Customer;
  - Damage related to the use of items, materials or software prescribed by the Customer to Remoticom;
  - Damage related to the use of suppliers, programmers or advisors prescribed by the Customer to Remoticom;
  - Damage resulting from the use of the Internet, the unavailability of software or any other means of communication;
  - Damage as a result of the fact that Remoticom acted on incorrect and/or incomplete information provided by the Customer, unless this incorrectness or incompleteness should have been known to Remoticom;
- 18.7 The liability of Remoticom is also excluded for:
- The direct and indirect consequences of the Customer's failure to comply strictly with the instructions for use or operation;
  - Normal wear and tear of the Products delivered by Remoticom, damage and/or wear and tear caused by improper use and as a result of overloading or any other form of abnormal use and reduced performance of batteries, accumulators and/or related items;
  - Damage caused by the Customer using the item or service for a purpose other than that for which it was purchased and/or as a result of changes made by the Customer to the item or service;
  - Abnormal or unforeseen circumstances which Remoticom should not reasonably have had to take account on the basis of the information submitted to it when the Agreement was concluded;
  - Damage against which the Customer could have insured himself.
- 18.8 The Customer indemnifies Remoticom against all claims of third parties due to liability as a result of a defect in a product or system or service provided by the Customer to a third party that included equipment, software, Documentation or other materials supplied by Remoticom, except if and insofar as the Customer proves that the damage was caused by that equipment, software, Documentation or other materials.
- 18.9 Remoticom is not obliged to compensate the Customer for any damage that is not immediately notified to Remoticom in writing, but at the latest within eight weeks after the damage was discovered or could reasonably have been discovered.

**ARTICLE 19: FORCE MAJEURE.**

- 19.1 Force majeure on the part of Remoticom will be deemed to exist if Remoticom is prevented from fulfilling its obligations under the Agreement or the preparation thereof as a result of: war, threat of war, terrorism, riots, revolution, acts of war, fire, water damage, flooding, government measures, import and export restrictions, defects in materials (including computers and other means of telecommunication), non-availability of materials (including computers and other means of telecommunication), strikes, blockades, sit-ins, irreplaceable, transport difficulties as a result of weather conditions and traffic disruption, both in the company of Remoticom and in the company of the Customer as well as in the company of third parties that are involved in the Agreement.
- 19.2 Force majeure is also understood to mean a failure of suppliers of Remoticom as a result of which Remoticom cannot fulfil its obligations or cannot fulfil them on time or in full.
- 19.3 If the force majeure situation on the part of Remoticom has lasted longer than one (1) month, the parties have the right to dissolve the Agreement.
- 19.4 Insofar as Remoticom, at the time of the commencement of force majeure, has already partially fulfilled its obligations under the Agreement or will be able to fulfil these obligations, and the fulfilled or to be fulfilled part has independent value, Remoticom will be entitled to invoice the fulfilled or to be fulfilled part separately. The Customer is obliged to pay these invoices as if they were a separate Agreement.

**ARTICLE 20: DISSOLUTION AND TERMINATION OF THE AGREEMENT.**

- 20.1 Each of the parties has the right to dissolve the Agreement only if the other party, after a proper and as detailed as possible written notice of default setting a reasonable time limit for remedying the shortcoming, culpably fails to fulfil essential obligations under the Agreement.
- 20.2 An Agreement which, due to its nature and content, does not end in completion and which has been entered into for an indefinite period of time, may be terminated by either of the parties by written notice of termination after proper business consultation, stating the reasons for the termination. If no explicit notice period has been agreed between the parties, a reasonable notice period must be observed when terminating the contract. The parties will never be obliged to pay any compensation as a result of termination.
- 20.3 Remoticom may terminate the Agreement in whole or in part without notice of default and without judicial intervention by giving written notice with immediate effect if the Customer is granted a suspension of payments, whether or not provisionally, if a petition for bankruptcy is filed against the Customer or if his company is liquidated or terminated other than for the purpose of reconstruction or amalgamation of companies. Remoticom will never be obliged to pay any compensation due to this termination.
- 20.4 The Customer is never entitled to terminate an Agreement that has been entered into for a definite period of time or that relates to the execution of Work prematurely, except in the situation referred to in the first paragraph.
- 20.5 If at the time of dissolution as referred to in paragraph 1 of this article, the Customer has already received a Product or Work in the performance of the Agreement, such performance and the related payment obligation will not be subject to dissolution, unless Remoticom is in default with respect to such performance. Amounts that Remoticom has invoiced prior to the dissolution in connection with what it has already done or delivered for the execution of the Agreement, remain due in full, subject to the provisions of the previous sentence, and will become immediately due and payable at the time of dissolution.

**ARTICLE 21: EDUCATION, COURSES AND TRAINING.**

- 21.1 Insofar as the Work of Remoticom consists of the provision of a study programme, course or training, Remoticom may at any time, prior to the commencement of such activities, request the amount due in respect of such study programme, course or training. The consequences of a cancellation of participation in a study programme, course of training will be governed by Remoticom's usual rules. This means that up to one month before the start of the study programme, course or training, this can be cancelled by the Customer free of charge. In case of cancellation between one month and 14 days before the start date, the costs are 50% of the original amount. If the cancellation is made within 14 days before the start of the study programme, course or training, the full costs must be paid by the Customer.
- 21.2 If in the opinion of Remoticom the number of registrations gives rise to this, Remoticom is entitled to combine the study programme, course or training with one or more other study programmes, courses or training sessions, or to have these take place at a later date or a later time.
- 21.3 If Remoticom is required to provide a study programme, course or training for one or more Customers, the agreed fee remains due if the relevant Customer or Customers, for whatever reason, are not present at the agreed place and time. Remoticom should always be notified of absences as soon as possible.
- 21.4 Remoticom will comply as far as possible with reasonable requests to provide the study programme, course or training at another time, but is never obliged to do so. Any additional costs shall be borne by the Customer.
- 21.5 If Remoticom and/or a third party engaged by it with the consent of the Customer is prevented from performing the agreed Work at the agreed time due to illness or any other reason, a different time will be agreed upon with the Customer as soon as possible in consultation with the Customer without Remoticom being liable for any compensation.
- 21.6 The Customer is entitled, in consultation with Remoticom, to designate another participant or participants to follow the activity against payment of any additional costs of preparation or repetition of previous activities.
- 21.7 Remoticom is authorised to deny a Customer who misbehaves or otherwise obstructs the proper execution of the activity unreasonably or prevents further access to that activity. In that case, the agreed compensation remains payable in full, without prejudice to Remoticom's right to compensation for any damage.
- 21.8 The agreed upon Work will be performed at a suitable location to be determined by Remoticom.
- 21.9 Without prior permission of Remoticom, it is not permitted to make image and/or sound recordings of a study programme, course or training.

**ARTICLE 22: PROTECTION OF PERSONAL DATA.**

- 22.1 In the context of the execution of the Agreement, Remoticom may process Personal Data on behalf of the Customer within the meaning of the General Data Protection Regulation ("GDPR"). If this is the case, the following paragraphs will apply.
- 22.2 To the extent that Remoticom processes Personal Data for the benefit of the Customer, Remoticom does so as a "Processor" and the Customer will qualify as a "Data Controller" within the meaning of the GDPR, unless the applicable Processors' Agreement expressly provides otherwise.
- 22.3 The Customer is solely responsible for the accuracy, quality and lawfulness of the Personal Data provided to Remoticom and indemnifies Remoticom against any action based on non-compliance with these obligations.

- 22.4 Remoticom will only process the Personal Data in accordance with the processing purposes and instructions of the Customer, as agreed in the data processing agreement. Remoticom will only process Personal Data for its own purposes where it has legitimate interest or consent of the data subject. In the event that Remoticom is obliged to process Personal Data on the basis of legislation and regulations, Remoticom should be considered as an independent Data Controller for those purposes. Remoticom is explicitly not responsible for other processing of this data. The Customer guarantees that the order to process Personal Data as referred to in the data processing agreement is in accordance with the applicable legislation and regulations and indemnifies Remoticom against any claims by third parties (including data subjects) arising in any way from the non-compliance thereof.
- 22.5 Remoticom will take appropriate technical and organisational measures with regard to the processing of Personal Data, in order to protect them against loss or any form of unlawful processing (such as unauthorised access to, modification or provision of the Personal Data), taking into account the state of the art, the nature of the Personal Data and the costs associated with taking the measures. However, Remoticom does not guarantee that security will be effective under all circumstances.
- 22.6 The responsibility for the data processed by the Customer using the Work or Products delivered by Remoticom lies entirely with the Customer. The Customer guarantees to Remoticom that the content, use and/or processing of the data are not unlawful and do not violate any right of a third party. The Customer indemnifies Remoticom against any legal action by a third party, for whatever reason, in connection with this data or the execution of the Agreement.

**ARTICLE 23: APPLICABLE LAW AND DISPUTES.**

- 23.1 The Agreements between Remoticom and the Customer are governed by Dutch law. The applicability of the 1980 Vienna Sales Convention is excluded.
- 23.2 Any disputes shall be settled by the competent Dutch court in the district in which Remoticom has its registered office as court of first instance, on the understanding that if a particular court is compulsorily appointed as competent court, the dispute shall be settled by the court thus appointed as court of first instance.
- 23.3 The parties will only appeal to the court after they have made every effort to resolve a dispute in mutual consultation.
- 23.4 With regard to disputes arising from an Agreement concluded with a Customer established outside the Netherlands, Remoticom is entitled to act in accordance with the provisions of the second paragraph of this article or - at its discretion - to bring the disputes before the competent court in the country or state where the Customer is established.

**ARTICLE 24: OTHER PROVISIONS.**

- 24.1 Remoticom reserves the right to amend the general terms and conditions and to declare the amended terms and conditions applicable to the existing Agreements. Remoticom will announce the change in time and the changes will take effect 30 days after written notification.
- 24.2 If the Customer does not accept the change, he may terminate the Agreement without judicial intervention, subject to any financial obligations on the part of the Customer.