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Regarding: General Terms

September 12<sup>th</sup> 2005

## I3D GENERAL TERMS OF DELIVERY

### Article 1 Definitions

In the present General Terms, the following definitions are applicable in singular as well as in plural.

1.1 **General Terms:** the present general terms, regardless of the form in which they are presented (on paper or electronically, e.g. through the i3d website).

1.2 **i3d:** company and place of business established in Rotterdam.

1.3 **Instructing Party:** party to whom i3d's offer has been directed, with whom i3d has reached an agreement or for whom the legal act takes place, on grounds of which Products or Services are delivered to this party.

1.4 **Products:** all moving things which are the object of any offer, agreement or other legal act in the frame of the relationship between i3d and the Instructing Party.

1.5 **Services:** all work and other activities which are the object of any offer, agreement or other legal act in the frame of the relationship between i3d and the Instructing Party.

1.6 **Agreement:** any reciprocal acceptance, confirmed in writing or through e-mail, with respect to i3d's Services. Orders placed electronically are explicitly included herein.

### Article 2 Applicability of the General Terms

2.1 The General Terms are applicable to and are part of all offers, agreements and other legal acts, regardless of the way in which they have been made (orally, in writing, electronically or in any other form), in the frame of delivery by i3d of Products and/or Services to or for the Instructing Party.

2.2 The General Terms are also applicable to Products and/or Services i3d obtained from a third party and delivered (be it with or without having treated them before delivery) to the Instructing Party as well as to Products and/or Services delivered to the Instructing Party for i3d by a third party, as a result of the execution of an offer, agreement or any other legal act.

2.3 Derogations of the General Terms are only valid providing both i3d and the Instructing Party have explicitly agreed to them in writing.

2.4 i3d explicitly rejects the applicability of possible general terms (of purchase) belonging to the Instructing Party.

2.5 In the event that a condition should become or should be declared void, the remaining conditions of the General Terms shall remain in full effect. i3d and the Instructing Party will agree mutually to a new condition in order to replace the void/annulled condition, thereby trying to approximate the intentions of the void/annulled condition as much as possible.

### Article 3 Offer and agreement

3.1 All offers made by i3d are made without purchase obligation, unless explicitly specified in writing.

3.2 Offers made by i3d are valid for the term indicated on the offer. In case no term has been indicated, the offer will be valid for 2 (two) weeks after the date of emission of the offer.

3.3 Agreements come into effect through the acceptance by i3d of the order given in writing by the Instructing Party or at the moment of execution of an order by i3d.

3.4 Agreements are always closed for a duration of one month, unless otherwise agreed. Premature termination is out of the question.

3.5 At the end of their established term, agreements are always prolonged with consecutive terms of one month, unless otherwise agreed.

3.6 In the frame of any remote purchase in the sense of articles 7:46a to 7:46j of the Civil Code, the Instructing Party – providing it is a physical person and doesn't operate in a professional frame or on account of a company – has the right to revoke the purchase within 7 days after placement of the order of (the) Service(s) without justification. In the event that the Instructing Party should want to exert its revocation right, it should notify i3d in writing of this decision. In that case, the Instructing Party may have to return to i3d any equipment delivered to it in the frame of the agreement as soon as possible and at its own risk and expense (postal parcel). In the event that the returned equipment should have suffered any damage ascribed to the Instructing Party, the Instructing Party empowers i3d beforehand to claim compensation of the damage suffered by i3d through the direct debit authorization the Instructing Party has provided.



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#### **Article 4 Prices, rates and surcharges**

4.1 All prices and rates mentioned by i3d are in euros, unless explicitly specified otherwise in writing.

4.2 All prices and rates mentioned by i3d are given VAT excluded and without taking into account any other taxes imposed by the government. Similarly, transportation and delivery costs or travel expenses have not been taken into account, unless explicitly specified otherwise in writing.

4.3 At all times, i3d has the right to modify its prices and rates. Unless explicitly agreed in writing that prices and rates are valid for a given period, the announced price changes for delivery of Products and/or Services will come into effect 2 (two) months after their announcement.

4.4 If the Instructing Party doesn't agree with a price and/or rate change announced by i3d, the Instructing Party has the right to terminate the agreement with i3d in writing, within 8 (eight) days following the announced change and by the time the announced change will come into effect.

4.5 In the event of a derogation of the original agreement between i3d and the Instructing Party, authorized by the Instructing Party, the ensuing surcharge will be calculated by means of the prices and/or rates in vigour at the time of execution of the additional service and presented to the Instructing Party.

4.6 8.3 Indexation: i3d reserves the right to increase rates yearly with a given percentage, without advance notice. This percentage equals five (5) percent at most, augmented by a percentage equalling the increase of the cost-of-living index, as established by the CBS, during the year preceding the increase in rates. It should be mentioned explicitly that increases of rates on grounds of the indexation applied by i3d do not constitute a valid motive for premature termination of the agreement. The indexation is an integral part of the agreed price.

#### **Article 5 Payment**

5.1 The Instructing Party must pay invoices issued by i3d within the term mentioned on the invoice in question. In the event that no deadline for payment is mentioned on an invoice, a term of 8 (eight) days will be applicable.

5.2 All payments by the Instructing Party to i3d are deduced from the old unpaid invoices addressed to the Instructing Party, regardless of any other indication given by the Instructing Party.

5.3 Any request for suspension, clearance or deduction submitted by the Instructing Party will be rejected.

5.4 At all times, i3d has the right to request (partial) payment in advance for the delivery of Products and/or Services, for instance through an authorisation of direct debit given to i3d. i3d also has the right to suspend delivery until the advance payment has been received. Furthermore, i3d has the right to request security of payment in the form preferred and indicated by i3d (e.g. banker's guarantee). In that case, i3d will not deliver the Products and/or Services until the desired security has been provided.

5.5 If the Instructing Party fails to pay any invoice issued by i3d within the deadline for payment, the Instructing Party will automatically be considered in breach of the agreement, without advance notice. In that event, i3d has the right to claim interests by right, in accordance with article 6:119 of the Civil Code, or compensation of loss caused by delay in accordance with article 6:119a of the Civil Code, at a per month rate or for part of the month and to be calculated in accordance with the amount of the unpaid invoice.

5.6 If, after the notice of default, the Instructing Party remains indebted of the owed sum augmented by the interest by right as provided for by article 6:119 of the Civil Code or the surcharge for loss caused by delay as provided for by article 6:119a of the Civil Code, i3d has the right to pass on the claim. On top of the main sum with the additional late payment interest by law (as provided for by article 6:119 of the Civil Code) or the surcharge for loss caused by delay (as provided for by article 6:119a of the Civil Code), the Instructing Party will then also be liable to cover all extra-judicial and possible judicial costs, explicitly in addition to the possible costs established by right. These costs will amount to at least 15% of the main sum.

5.7 In the event of late payment, i3d reserves the right to immediately suspend services. The party concerned accepts liability for the following surcharge per invoice in respect to i3d (in order to cover administration costs) in the event that the invoice should be passed on to a debt collection agency: € 90,- augmented by € 10,- per exhortation and € 10,- per cost for charge from a debt collection agency; for an exhortation sent by registered mail, € 22,- will be charged. These in-house administration costs and the invoice total will be augmented by the collection costs and all judicial and extra-judicial costs entailed by the collection procedure. After payment of all outstanding sums, reconnection can be performed at a one-time charge of € 65,-.

5.8 i3d reserves the right to dissolve the agreement and consider it dissolved by right if the party concerned doesn't timely pay the amounts due in accordance with this agreement.

5.9 In the event of late payment, the party concerned accepts liability for all judicial and extra-judicial costs and interests by right incurred by any third party involved by i3d or the debt collection agency.



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#### **Article 6 Delivery, risks and retention of title**

6.1 The terms of delivery announced by i3d for Products and/or Services are presented only for information purposes, thus are never to be considered a deadline, unless explicitly agreed otherwise in writing.

6.2 The risk of loss or damage to the Products in the frame of the agreement between i3d and the Instructing Party is transferred to the Instructing Party from the moment the Products in question become the actual possession of the Instructing Party or any proxy acting on its behalf.

6.3 It is compulsory that the Instructing Party should check all delivered Products for possible defects or flaws immediately following delivery.

6.4 The title to all goods delivered to the Instructing Party shall remain vested in i3d, until full payment of all due sums by the Instructing Party for Products and/or Services delivered by i3d and all due interests and surcharges, as provided for by articles 5.5 and 5.6. Inasmuch as it was agreed explicitly in writing that certain rights will be granted or transferred, the rights will always be transferred or granted providing the charges pertaining thereto have been fully and timely paid.

#### **Article 7 Reclamations**

7.1 Any contestation from the Instructing Party regarding a i3d invoice or an amount recovered by i3d through direct debit should be notified in writing to i3d within 14 (fourteen) days following the invoice date or the date on which the direct debit was performed; past this deadline, the invoiced or debited sum shall be considered approved by the Instructing Party.

7.2 Should the Instructing Party consider that a Product or Service delivered by i3d does not meet the criteria agreed on between both parties, then the Instructing Party should immediately notify i3d within 14 (fourteen) days following delivery or following the moment starting from which the Instructing Party could have reasonably noticed the shortcoming indicated by it.

#### **Article 8 Intellectual property**

8.1 All rights on intellectual property pertaining to the Products and/or Services as well as to designs, programs, documentation and any other material developed and/or used for the preparation or implementation of the agreement between i3d and the Instructing Party – or the rights deriving thereof – are solely vested in i3d or its suppliers. The delivery of Products and/or Services doesn't entail any transfer of rights of intellectual property.

8.2 The Instructing Party is always granted a mere non-exclusive and non-transferable right to use the Products and results of the Services for the agreed purposes. The Instructing Party will, during such use, strictly adhere to conditions specified in the General Terms or otherwise imposed on the Instructing Party.

8.3 Products and results of the Services will never, in any way, be disclosed to the public, multiplied or held at a third party's disposal by the Instructing Party without prior authorisation in writing from i3d.

8.4 The Instructing Party will never remove or modify notices placed by i3d or its suppliers and pertaining to authors' rights, brands, trade marks or other rights of intellectual property.

8.5 i3d guarantees that it holds the right to transfer the rights mentioned in article 8.2 to the Instructing Party; i3d will also keep the Instructing Party indemnified from possible claims from third parties in the frame of this article. This condition will not be valid in case and insofar as the Products and/or results of the Services have been altered and/or have been delivered in connection with goods delivered by a third party, unless – in the last case – the Instructing Party can prove that the rights of the third party only pertain to the Products and/or results of Services delivered by i3d.

#### **Article 9 Supply of information by the Instructing Party**

9.1 The Instructing Party will always timely supply complete information as requested by i3d, as well as any other type of information required for the delivery of Products and/or Services.

9.2 The Instructing Party guarantees that the information mentioned in article 9.1 is accurate and complete and that it is entitled to provide the information to i3d in the frame of delivery of Products and/or Services. The Instructing Party will indemnify i3d from all possible claims from third parties in this frame.

9.3 In the event that part of the information supplied by the Instructing Party to i3d could be considered personal information, the Instructing Party guarantees that the information complied with the privacy laws in vigour at the time the information was supplied and that its use and treatment by i3d is authorized. The Instructing Party indemnifies i3d from all possible claims from third parties in this frame.

#### **Article 10 Confidentiality**

10.1 The parties will not disclose any confidential information concerning the company of the other party, obtained in the frame of the agreement. Parties will also impose this restriction on their employees and on third parties employed for the implementation of the agreement between both parties.

10.2 Information will by all means be considered confidential if any one of the parties indicates it as such.



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#### **Article 11 Liability of i3d**

11.1 The legal liability of i3d for imputable faults in the frame of the implementation of the agreement is restricted to the compensation of direct damage suffered by the Instructing Party up to a maximum amount equalling the compensation established in the agreement in question. If the agreement has a term exceeding one year, the established compensation will equal the sum total of compensations established for the ongoing year at the time the fault occurs. In no case will the total compensation for direct damage exceed 250 euros and – if the damage is of physical or material nature – 250 euros per event, whereby a series of events will be considered one event.

11.2 With direct damage is exclusively meant: costs the Instructing Party had to reasonably incur in order to repair or discontinue the shortcomings of i3d so that i3d's performance would again be in accordance with the agreement, as well as reasonable costs incurred to prevent or restrict such damage and reasonable costs incurred to establish the cause and the importance of the damage. If i3d and the Instructing Party have agreed on a binding term of delivery, the costs will be taken into account, which the Instructing Party had to reasonably incur to take emergency dispositions on account of i3d's failure to deliver within the binding term of delivery, less possible savings, also in the case of direct damage.

11.3 Each liability of i3d for indirect damage, including but not limited to consequential loss, loss of profits and loss of revenue is excluded.

#### **Article 12 Force Majeure**

12.1 There will be no imputable faults ascribed to i3d in case of Force Majeure.

12.2 If the circumstances of Force Majeure have lasted for longer than 60 (sixty) consecutive days, the Instructing Party will have the right to dissolve the agreement in writing and out of court. No damage compensation whatsoever will be imputable to i3d for damages suffered by the Instructing Party on account of the dissolution of the agreement. i3d has the right to claim payment from the Instructing Party for all Products and/or Services delivered to the Instructing Party up to the moment of dissolution of the agreement.

#### **Article 13 Termination**

13.1 Each party has the right to dissolve the agreement out of court in the event that the other party should fail to fulfil its obligations in the frame of the agreement and should remain incapable of remedying the breach within a reasonable timeframe after having received due notice in writing. Dissolution does not discharge the Instructing Party of any obligation of payment for Products and/or Services already delivered by i3d, unless i3d is to be considered in breach with respect to a certain Product or Service.

13.2 i3d has the right to dissolve the agreement immediately without advance notice and without being considered liable for any kind of damage compensation to the Instructing Party if suspension of payment has been granted to the Instructing Party, if a declared state of bankruptcy has been requested for the Instructing Party, if (part of) the possessions of the Instructing Party have been seized, if the company of the Instructing Party finds itself in a state of liquidation or goes out of business, if the Instructing Party commits acts in violation of the (inter)national laws and regulations or if the Instructing Party has supplied false information to i3d.

13.3 Immediately after the dissolution of the agreement (whichever the reason of dissolution), the Instructing Party will stop using Products and/or results of Services provided to it and will return all programs, documentation and other material provided to it in the frame of the agreement.

13.4 Early termination of the agreement must be notified in writing, observing a period of notice of two (2) weeks at the end of the agreed on period, unless otherwise agreed. The termination may be notified through mail or fax, on the understanding that the period of notice will begin on the day that i3d receives the notice of termination. The notice of termination should mention the personal information and the customer number (if any). The notice should also bear the signature of the Instructing Party. It is impossible to send a notice of termination through e-mail.



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#### **Article 14 Personnel**

14.1 In the event that i3d personnel should perform its duties in the frame of the delivery of Products and/or Services on the premises of the Instructing Party, the Instructing Party will offer all the support necessary for the accomplishment of these duties.

14.2 Throughout the duration of the agreement between Instructing Party and i3d and for one year following termination thereof, the Instructing Party shall not hire or employ in any other way, be it directly or indirectly, personnel of i3d without prior written authorisation of i3d. With personnel of i3d is meant: all persons which i3d or one of its associated enterprises has hired or which have stopped working for i3d or one of its associated enterprises less than 6 (six) months ago.

#### **Article 15 Disputes**

15.1 Offers, agreements and other legal acts in the frame of delivery of Products and/or Services by i3d are governed by Dutch law.

15.2 Disputes between i3d and the Instructing Party, resulting from or pertaining to offers, agreements and other legal acts in the frame of delivery of Products and/or Services by i3d will be exclusively presented to the competent judge in the district of Rotterdam.

#### **Article 16 Disablement of services**

16.1 i3d has the right to temporarily disable delivered Services for maintenance purposes.

16.2 i3d has the right to (temporarily) disable delivered Services or limit their use if the Instructing Party should fail to fulfil one of its obligations toward i3d or displays conduct that is in breach with the present General Terms. i3d will notify the Instructing Party thereof, unless this cannot be reasonably expected from i3d. The imposed restriction or disablement doesn't affect the other obligations of the Instructing Party and thus has no suspending effect.

16.3 The Instructing Party will be reconnected upon the fulfilment of all its obligations within a deadline imposed by i3d and upon payment of the thereto established reconnection fee (€ 65,- VAT excluded).