

**MACHSOL B V**

**General Conditions  
of Delivery**

**Customers in Europe**

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## 1. DEFINITIONS

‘Agreement’ means the arrangements agreed in a form or a document or in some other way under which Supplier will deliver to Customer the goods and/or Services defined therein.

‘Customer’ means the party acting in the pursuit of an occupation or business with whom Supplier has entered into an Agreement for the delivery of goods and Services subject to these General Conditions.

‘Facilities’ means all software and related user documentation that are and shall remain the property of Supplier and that Customer rents or loans from Supplier or that Supplier has provided or installed at Customer’s premises for the purposes of the Services within the framework of an Agreement.

‘General Conditions’ means these General Conditions of Delivery.

‘Party or Parties’ means the Customer or Supplier individually (‘Party’) or collectively (‘Parties’).

‘Service Description’ means an annex to the Agreement that describes the Service.

‘Services’ means electronic communication, ICT or other related services deliverable to Customer by or on behalf of Supplier.

‘Supplementary Conditions’ means the conditions that supplementary to the General Conditions are applicable to the delivery of specific products and/or Services.

‘Supplier’ means MachSol BV and all other subsidiaries of MachSol Inc.

## 2. GENERAL PROVISIONS

2.1 These General Conditions apply to all offers and Agreements under which Supplier delivers any goods and/or Services to Customer.

2.2 If conflicts exist between provisions in the Agreement, Service Description, General Conditions and Supplementary Conditions, the following precedence shall apply:

- a. Agreement
- b. Service Description
- c. Supplementary Conditions
- d. General Conditions

2.3 Conditions of purchase or other conditions of Customer and/or third parties shall not apply under any circumstances whatsoever. Supplier’s signature or acceptance (tacit or otherwise) of documents of Customer and/or third parties declared subject to such general conditions shall not constitute their acceptance.

2.4 Agreements and changes thereto shall be established:

- a. by signature and on the date of signature by both Parties of an offer submitted by Supplier or some other document;
- b. on the date of receipt of Supplier’s written confirmation of its acceptance of Customer’s application;
- c. if Customer enables Supplier to start performing the work or deliver the service.

## 3. PRICE AND PAYMENT

3.1 All prices and rates are stated in euro exclusive of value added tax (VAT) and other government levies. Travel time, travel and subsistence expenses, extra hours and other costs attached to the work are not included in the prices and rates and may be billed separately by Supplier.

3.2 All agreed prices and rates shall be increased on 1 January each in accordance with the most recently published price index published by Statistics Netherlands (CBS) for collectively bargained wages in the business services sector. No price adjustment shall occur in any year where the price index is negative.

3.3 Supplier reserves the right to increase the agreed prices and rates once a year over and above the annual price index-linking subject to notification of Customer at least four weeks in advance. A price increase under this article 3.3 shall give Customer the right to cancel the Agreement without charge only in the following cases:

- a. if the price increase concerns a public electronic communications service; or
- b. if the price amendment does not concern a public electronic communications service and the price increase exceeds 5%.

3.4 Supplier shall invoice amounts owed by Customer in the following way:

- a. non-recurring amounts shall be billed on the date of delivery or supply;
- b. periodical amounts shall be billed in advance and shall be payable from the date of delivery or start of use of the Service;
- c. usage charges and amounts for time and materials shall be billed monthly in arrears.

3.5 Customer shall pay all invoices by the due dates stated on each invoice. A payment term of 21 (twenty-one) days from the invoice date shall apply if an invoice does not state a due date.

3.6 Objections to invoiced amounts shall be made known to Supplier in writing before the due date, in the absence of which Parties shall accept the accuracy of the invoiced amounts after expiry of the due date. The data kept by Supplier shall determine the amounts owed by Customer, unless Customer demonstrates that the data are incorrect.

3.7 Customer shall be in default without further notice on failure to pay amounts owed by the due date. Supplier shall then be entitled to charge interest at the statutory rate within the meaning of article 6:119 (a) and article 6:120 of the Dutch Civil Code (statutory interest for late payment) and to fair reimbursement of legal and out-of-court expenses and debt collection costs.

3.8 Customer shall not be entitled to make any set-offs.

3.9 Customer shall only be entitled to suspend payment of a disputed part of the debt. Customer shall inform Supplier within five working days of its reasons for seeking recourse to suspension of payment.

#### **4. SECURITY, DEPOSIT, BANK GUARANTEE**

4.1 Supplier shall have the right to require security from Customer in the form of a bank guarantee, deposit or some other kind of security if legitimate doubt exists about Customer's ability to fulfil its payment obligation.

4.2 The security amount shall not exceed the amount that Customer will owe Supplier over a period of six months for the agreed goods and/or Services.

4.3 At such time as the need for security no longer exists, Supplier shall notify Customer that the security or bank guarantee or other form of security may be discontinued or, as the case may be, shall refund the deposit.

4.4 No interest shall be payable over the deposit.

#### **5. NON-DISCLOSURE**

5.1 Parties shall keep confidential all information and data received from each other insofar as marked confidential or evidently confidential from its nature, unless a legal obligation exists to disclose such information and/or data. The non-disclosure obligation shall end one year after the Agreement ends.

## **6. RISK, TITLE AND DUTY OF CARE**

6.1 The risk of destruction, loss, theft or degradation of items shall transfer to Customer at the time of delivery.

6.2 Supplier shall retain title to the items until such time as Customer has paid all owed amounts. Until obtaining ownership Customer shall refrain from selling, mortgaging or pledging the items and shall not rent or loan them out or in any other way make them available to third parties under any title whatsoever.

6.3 The risk of destruction, loss, theft or degradation of a Facility shall transfer to Customer at the time of its supply or installation at premises of Customer or its provision to Customer in any other way.

6.4 Customer shall ensure that Facilities are installed at a suitable place. Customer shall leave intact the type numbers, serial numbers, logos and/or other markings placed on the Facilities.

6.5 Customer shall not have the right to make any changes to Facilities (including changes to accompanying software or software implemented in Facilities) or to relocate or damage them or to commission parties other than Supplier to install or relocate them unless with the prior consent of Supplier.

6.6 Customer shall immediately inform Supplier if items or Facilities are the subject of actual or impending seizure or if in any other way the ownership rights of Supplier or its engaged third parties are in danger of being harmed. Supplier shall have the right to recover the items from Customer for such time as their ownership is vested in Supplier. The cost of such recovery shall be payable by Customer. Customer shall afford Supplier access to the place where the items are located.

## **7. WARRANTY**

7.1 Supplier shall deliver goods and Services in accordance with the technical and/or functional specifications as agreed in the Agreement. Supplier shall not guarantee uninterrupted or faultless delivery of Services.

7.2

- a. Items shall be covered by a warranty of one year that shall start on the date of delivery.
- b. No warranty shall be provided for items Customer is unable to demonstrate were delivered by Supplier to Customer within the term of the warranty.

7.3

- a. System software shall be covered by a warranty of three months that shall start the day after delivery of such software.
- b. The warranty on systems software shall include free localisation and correction of errors if the software fails to function in conformity with the technical and functional specifications agreed between Parties.
- c. Supplier does not warranty that system software shall function uninterrupted and completely error-free or that all errors shall be corrected.

7.4 Work covered by the warranty shall be performed only in the Netherlands at an address stated by Supplier.

7.5 The warranty shall be invalidated if:

- a. parties other than Supplier repaired, altered or expanded the items without the prior written consent of Supplier;
- b. in Supplier's opinion the items have been neglected or used, treated and/or maintained carelessly and/or injudiciously;
- c. type numbers, serial numbers and/or warranty stickers have been damaged, removed and/or altered;
- d. changes have been made to the warranty certificate and/or purchase slip;

- e. defects have occurred due to failure to connect and/or install (approved) items in accordance with the directions;
- f. defects have occurred through other external causes;

7.6 If Supplier has delivered items under a manufacturer's warranty, the only warranty terms and conditions that shall apply shall be those of the manufacturer.

7.7 The warranty term shall not be extended or renewed through performance of work under the warranty, with the proviso that the work performed under the warranty (including replaced parts) shall be covered by a three-month guarantee.

7.8 Any shipping or callout costs incurred may be billed to Customer.

## **8. INTELLECTUAL PROPERTY RIGHTS**

8.1 Subject to the limitations and conditions set forth in the Agreement, Supplier shall grant Customer a non-exclusive, non-transferable right to use the software or other items and Facilities delivered or provided in connection with the Agreement in the form in which delivered or provided, but solely for internal purposes and to the extent necessary to use the Services delivered under the Agreement.

8.2 The intellectual or industrial property rights attached to all software, hardware or other items and Facilities, including documentation, provided by Supplier to Customer under or pursuant to the Agreement shall be vested in Supplier or its suppliers and/or in the third-party that Supplier authorised to provide Customer with the software, hardware or other items. Customer shall obtain only those rights explicitly assigned in the Agreement.

8.3 Supplier shall exercise its best efforts to ensure that Customer's use of the software, hardware and other items and Facilities provided by Supplier for the purposes of the Services do not infringe the intellectual or other property rights of third parties.

8.4 Supplier shall indemnify, hold harmless and defend Customer against third-party claims related to alleged infringement of their intellectual or industrial property rights by software, hardware or other items and Facilities provided by Supplier for the Service(s), provided always that Customer (i) immediately informs Supplier of such claims, (ii) refrains from acknowledging the claims, and (iii) cooperates in putting up a defence against such claims. The indemnification obligation shall cease to exist if and to the extent that the alleged infringement is reasonably ascribable to misuse of or alterations to the software, hardware or other items by Customer, its customers, associated companies, agents or subcontractors and, if the (alleged) infringement relates to an indirect infringement, or if the (alleged) infringement stems from a combination of the software, hardware or other items delivered for the Agreement with other products, software or elements not provided by Supplier.

8.5 If a court of law has ruled irrevocably that an act or omission by Supplier has resulted in Customer infringing the intellectual or industrial property rights of third parties, Supplier shall, at its election:

- a. take measures to end the infringement, such as replacing the infringing Service by another functionally equivalent service or by altering the Service so that it ceases to infringe but remains functionally equivalent, or
- b. end the Services and refund to Customer any amounts already received for Services not yet rendered.

## **9. COOPERATION BY CUSTOMER**

9.1 Customer shall provide on time in all instances all information that may be useful and required for performance of the Agreement and shall guarantee that provided information shall be correct and complete.

9.2 Supplier shall have the right to suspend performance of the Agreement if Customer fails to provide, provide on time or provide in accordance with the arrangements any information and devices required for performance of the Agreement, or in any other way fails to fulfil its obligations.

9.3 Customer shall at all times provide employees of Supplier access to places where work must be performed or Services must be provided.

## **10. DELIVERY TIMES AND NON-FULFILMENT**

10.1 All delivery times stated by Supplier shall be approximate and shall never be construable as deadlines. If Supplier does not meet a delivery time it shall not constitute as a breach by Supplier.

10.2 Supplier and Customer shall consult with each other as soon as possible in the event of an impending overshoot of a delivery time.

10.3 Supplier shall not be in default (verzuim) until after Customer has served Supplier with a written notice of non-fulfilment that afforded a reasonable time for rectification and after Supplier has failed to fulfil within such reasonable time.

## **11. TERM AND TERMINATION OF AGREEMENT**

11.1 An Agreement concluded for a fixed term shall be tacitly renewed on expiry of the initial contractual term by one (1) year, unless Customer or Supplier has terminated the Agreement by giving three (3) months written notice prior to expiry of the initial contractual term or renewal period. Agreements that by their nature may not be entered into for more than five (5) years under prevailing legislation shall not be tacitly renewed on expiry of those five (5) years. Such agreements may be renewed at the initiative of Customer, however. Renewal in this way shall be subject to the provisions made in the first and second sentences of this article 11.1.

11.2 An Agreement concluded for an open-ended term may be cancelled by either Party, subject to prior consultation, through written notice that states the reasons for cancellation. Cancellation cannot take place until after expiry of the minimum term if one has been agreed. Notice of three months shall apply if Parties have not agreed a period of notice. The open-ended contractual term of Agreements that by their nature may not be entered into for more than five (5) years under prevailing legislation shall be converted to a fixed-term Agreement. These agreements may be renewed at the initiative of Customer, subject to the provisions of article 11.1.

11.3 If Customer cancels a service prior to expiry of the contractual term (minimum or otherwise), Supplier shall be entitled to the remaining charges that would have been owed if the Agreement had not been cancelled in the interim.

11.4 Supplemental to the provisions made in the previous clauses of this Article 11, Supplier shall be entitled to end the Service(s), subject to prior notice of at least three months, if necessitated by technical or business economics reasons. Supplier shall offer a replacement service where possible. If Customer declines to accept the Service, or if a replacement Service is unavailable, the Agreement shall end on the date that Supplier ends provision of the Service.

11.5 The provisions of article 11.4 shall also apply if Supplier can no longer have at its disposal specific products and/or services provided by third parties for reasons beyond Supplier's control.

## **12. SUSPENSION**

12.1 Supplemental to the suspension grounds existing at law, Supplier shall have the right to suspend the provision of service forthwith, in full or in part, and, if applicable, to disconnect or switch off Hardware and data cables of Customer from Supplier's installations, hardware and/or network or bar electronic access to them, if:

- a. a governmental authority or regulator obliges Supplier to take such action;
- b. such action is necessary to comply with (or enforce) legislation or amended legislation;
- c. Supplier must take such action to carry out a court order or judgement;

- d. the quality or availability of the services that Supplier delivers to other customers is being impaired or is in danger of being impaired due to the behaviour of Customer or its personnel, or by the hardware or cables of Customer;
- e. the safety of persons or goods is being impaired or is in danger of being impaired due to the behaviour of Customer or its personnel;
- f. situations exist where immediate action must be taken, for example to protect the safety of persons or the integrity of the network;
- g. legitimate reasons exist for assuming that the provision or use of information or services via the Service is illegal or is unlawful in relation to third parties.

12.2 Customer shall be obliged to pay all charges payable throughout the period of suspension as referred to in article 12.1.

12.3 Insofar as Supplier has suspended the provision of service on account of Customer's failure to fulfil an obligation, Supplier shall have the right to charge reconnection fees on resumption of the service.

### **13. DISSOLUTION OF AGREEMENT**

13.1 Supplemental to the dissolution grounds that exist at law, Supplier shall have the right to dissolve the Agreement forthwith, in full or in part, without recourse to the courts and without serving notice of non-fulfilment, if Customer:

- a. has petitioned for or been granted suspension of payments;
- b. has been declared bankrupt or is the subject of a petition for bankruptcy.

### **14. LIABILITY OF SUPPLIER; INDEMNIFICATION**

TO THE EXTENT PERMITTED BY LAW, SUPPLIER'S CUMULATIVE LIABILITY TO CUSTOMER OR ANY PARTY RELATED TO CUSTOMER FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT OF FEES PAID TO SUPPLIER BY CUSTOMER FOR THE SERVICES RENDERED BY SUPPLIER HEREUNDER. IN NO EVENT SHALL SUPPLIER BE LIABLE TO CUSTOMER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR HARM TO BUSINESS, LOST PROFITS, LOST SAVINGS, OR LOST REVENUES, WHETHER OR NOT SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS OF LIABILITY SHALL APPLY TO ALL CAUSES OF ACTION OR CLAIMS IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, INDEMNITY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION, AND OTHER TORTS. WITHOUT LIMITATION OF THE FOREGOING, SUPPLIER SPECIFICALLY SHALL NOT BE LIABLE FOR (i) DAMAGES CAUSED BY ACTS OR OMISSIONS OF CUSTOMER OR CUSTOMER'S EMPLOYEES OR AGENTS, INCLUDING, WITHOUT LIMITATION, ANY FAILURE BY CUSTOMER TO BACK UP DATA OR INFORMATION BEFORE SUPPLIER BEGINS RENDERING THE SERVICES OR ANY PORTION OF THE SERVICES OR (ii) THE LACK OF INTEROPERABILITY OF SOFTWARE OR HARDWARE USED BY CUSTOMER. EXCEPT FOR A BREACH BY EITHER PARTY OF ITS CONFIDENTIALITY OR INDEMNIFICATION OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY BE LIABLE, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR OTHERWISE ARISING OUT OF OR RELATED TO THIS AGREEMENT, FOR ANY AMOUNT IN EXCESS OF THE AMOUNTS ACTUALLY PAID BY CUSTOMER TO SUPPLIER FOR SERVICES DURING THE TWELVE MONTHS PRIOR TO THE LAST EVENT GIVING RISE TO ANY CLAIM. EXCEPT FOR A BREACH BY EITHER PARTY OF ITS CONFIDENTIALITY OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST DATA, LOST PROFITS OR DAMAGES RELATED TO BUSINESS INTERRUPTION EVEN IF THE PARTY IS NOTIFIED IN ADVANCE OF SUCH POSSIBILITY) ARISING OUT OF OR RELATING TO THIS AGREEMENT. THIS AGREEMENT SETS FORTH THE PARTIES' SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ACTIONS ARISING UNDER THIS AGREEMENT

CUSTOMER SHALL INDEMNIFY AND HOLD HARMLESS SUPPLIER AND ITS EMPLOYEES FOR ALL CLAIMS LODGED BY THIRD PARTIES, IN PARTICULAR THIRD-PARTY CLAIMS ON ACCOUNT OF PRODUCT LIABILITY DUE TO A DEFICIENCY IN A PRODUCT OR SYSTEM DELIVERED BY CUSTOMER TO A THIRD PARTY THAT CONSISTED IN PART OF SOFTWARE, WEBSITES, DATABASES OR OTHER MATERIALS SUPPLIED BY SUPPLIER.

## **15. FORCE MAJEURE**

15.1 Neither Party shall be bound to fulfil any obligation if prevented from doing so by force majeure.

15.2 Insofar as not already included, force majeure shall further mean instances of strikes, company sit-ins, blockades, embargoes, government measures, war, revolution and/or any similar state, power failures, faults in electronic communication lines, cable breaks, fires, explosions, water damage, lightning damage, natural disasters, flooding and/or earthquake, shortage of and/or sickness of personnel and non-fulfilment by suppliers of Supplier or force majeure on the part of suppliers of Supplier.

15.3 If force majeure lasts longer than ninety (90) days, each Party shall have the right to end the Agreement through written notice by registered letter, unless it appears likely that the force majeure will be resolved within a reasonable period of time. Anything already delivered under the Agreement shall be paid for proportionately, without Parties owing each other anything further.

## **16. ALTERATION AND EXPANSION OF WORK, SERVICES AND/OR DELIVERIES**

16.1 If Supplier has performed work, other services or other deliveries outside the content or scope of the agreed matters at the request or with the consent of Customer, Supplier shall receive payment for such work, service or deliveries in accordance with its customary rates or, if a fixed price has been agreed, the additional costs shall be charged. However, Supplier shall not be under obligation to meet such a request and may require conclusion of a separate written agreement.

16.2 Customer accepts that alteration or expansion of the work, services or deliveries within the meaning of this article may affect the agreed or expected time of completion of obligations, mutual responsibilities of Customer and Supplier and agreed rates of Supplier.

## **17. OBLIGATIONS UNDER DATA PROTECTION ACT AND TELECOMMUNICATIONS ACT**

17.1 Parties shall afford each other every cooperation to enable the other Party to fulfil its obligations under the Data Protection Act.

17.2 In all instances Customer shall inform Supplier timely and properly of whether data processing for the purpose of an Agreement falls under the Data Protection Act and whether the Dutch Data Protection Authority or the data protection officer of Customer has been notified of the processing. Customer shall reimburse Supplier for any work and/or costs necessary in respect of obligations mentioned in this article.

17.3 Customer shall ensure that the person with responsibility for data protection within the meaning of the Data Protection Act fulfils all obligations under the Act. Customer shall indemnify and hold harmless Supplier for all and any claims lodged by third parties against Supplier under the Data Protection Act.

## **18. FINAL PROVISIONS**

18.1 Dutch law shall govern the Agreement. The Agreement excludes application of the United Nations Convention on Contracts for the International Sale of Goods 1980.

18.2 Any disputes between Parties arising from or related to the Agreement shall be exclusively submitted to a court of law with jurisdiction in Amsterdam.

18.3 Supplier shall be entitled to amend these General Conditions. An amendment shall take effect four weeks after its announcement or on a later date as may be cited in the announcement.

18.4 Supplier shall be entitled to modify a Service or to replace certain parts of the Service by other parts at any time, subject to retention of the fundamental nature of the Service.

18.5 Rights granted to Customer by Supplier for use of Services shall be strictly personal. Unless explicitly otherwise agreed, it shall be prohibited for Customer to resell or cause the resale of such rights or to make them available to third parties in any other way.

18.6 For the term of the Agreement and one year thereafter, each Party shall refrain from employing employees of the other Party who were involved in performance of the Agreement, or to cause them to work for it in any other way, directly or indirectly, without the prior written permission of the other Party. The other Party shall have the right to attach conditions to such permission.

18.7 Supplier shall be entitled to engage third parties to fulfil all or some of its obligations under the Agreement. However, this shall not in any way relieve Supplier of its obligations.

18.8 Supplier shall be entitled to assign the Agreement(s) with Customer to other companies in Supplier's group and/or to third Parties. Customer shall not withhold its cooperation or delay such assignment on unreasonable grounds. Supplier shall inform Customer of such an assignment.

18.9 Customer shall send all correspondence and notifications for the purposes of an agreement to the address of the designated person or department.

18.10 If provisions or parts of provisions in these General Conditions or annexes are or become unlawful, invalid or unenforceable, the surviving provisions or the valid part of the invalid provision shall remain fully in force and enforceable, without any consequences for the other obligations of Parties. The unlawful, invalid or unenforceable provision shall be deemed replaced by a provision that as far as possible has the same legal and commercial purport.