



## GENERAL PURCHASE CONDITIONS HYRDE

DATED 1 JULY 2018

These General Purchase Conditions shall apply to all agreements concluded with Hyrde B.V., as well as to all requests for quotations made by Hyrde made to a Supplier of Services and/or Products.

### Definitions

A number of terms appear capitalized in the General Purchase Conditions. These terms are defined below:

**Acceptance Test:** the test procedure by which it can be demonstrated that the Services and Products delivered comply with the (technical and functional) specifications agreed upon.

**Activation:** the activation of any Product by Hyrde or any of the (indirect) Customers.

**Agreement:** The agreement to deliver Services and Products, concluded between Hyrde and the Supplier including the relevant Purchase Orders placed under the Agreement.

**Cloud and Hosting Services:** Services providing network access to a (shared set of) configurable systems and devices (such as networks, websites, servers, storage, Software, applications, Products and/or Services) that can be quickly activated and released, with minimum management activities and interaction with the provider.

**Customers:** any natural or legal person ultimately using the Services and/or Products, which have been provided by Supplier to Hyrde.

**Delivery:** the delivery of the Products agreed upon at the agreed place and in the agreed condition.

**Documentation:** the system manual, user manual and all other written and electronic information concerning or pertaining to, respectively, the Services and Products delivered by the Supplier.

**Error:** failure to comply or fully comply with specifications agreed upon with respect to Product or the absence of obvious and identifiable characteristics that Hyrde may reasonably expect.

**General Data Protection Regulation (GDPR):** Regulation (EU) 2016/679 of the European Parliament and the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data, the free movement of such data.

**Implementation:** the introduction of Software to the Product on which, or in connection with which, the Software and/or the System must function and, if necessary, the modification of the Software and/or the System in such a way that it functions in accordance with the specifications agreed upon.

**Maintenance:** preventing, tracking and/or repairing Errors in the Products and/or making changes to the Product.

**Management:** activities agreed upon between the Parties aimed at support and use of Products and/or Services, including that support to be provided by the Supplier to Hyrde.

**Personnel:** the personnel and/or auxiliary persons to be assigned by either Party on the basis of the Agreement, who will work under such Party's responsibility pursuant to these General Purchase Conditions.

**Privacy Legislation:** all applicable laws and regulations relating to the processing and protection of personal data, including, but not limited to, the General Data Protection Regulation, as well as the Implementation Act relating to the General Data Protection Regulation.

**Product:** movable property supplied or to be supplied as further defined in the Agreement, including any Software that is required to operate or use the Product.

**Services:** the work, activities and tasks that must be performed by the Supplier in the context of the performance of the Agreement.

**Software:** software to be supplied, made available, maintained and/or managed by Supplier, including releases, updates, customized software and standard application software.

**Supplier:** the Party that delivers products to Hyrde, performs services for Hyrde, or has made agreements with Hyrde to this end, including one to whom Hyrde has provided instructions of another nature.

**Version:** a numbered (status) description of Product, Software and/or Documentation that provides insight into available functionality and changes that have been made.

## CHAPTER 1 - GENERAL PROVISIONS

### 1. General

1.1 This chapter one applies in combination with the special provisions as further set out in chapter two and following. If the general provisions, or any part thereof, contradict or are inconsistent with the special provisions, the special provisions prevail.

1.2 Deviations from and/or changes to these General Purchase Conditions must be agreed upon in writing. The Agreement is concluded exclusively by a written order confirmation from Hyrde. The rights and obligations of Supplier arising from one or more Agreement(s) with Hyrde cannot be transferred to a third Party whether fully or in part without the prior written permission of Hyrde. Supplier hereby approves in advance (*bij voorbaat*) its approval to any transfer or assignment of the rights and obligations by Hyrde to any other group company that is part of the VolkerWessels Group.

### 2. Prices

2.1 All prices are excluding Dutch VAT. All prices are including domestic turnover tax (VAT) or similar taxes. The prices include all costs at the expense of Hyrde, including the costs of packaging, assembly (insofar applicable), installation (insofar applicable), service, transport and Delivery at a location to be designated by Hyrde. Prices include all deductions, customs duties, taxes, premiums and other government levies due.

2.2 The Supplier may only charge price increases resulting from contract extras if Hyrde has given prior written consent for the performance of those extras.

### 3. Taxes

3.1 The Supplier pays, and takes full responsibility for the payment of, turnover tax and all contributions and taxes with regard to unemployment insurance and old-age provisions, pensions, contributions for other social insurances, annuities, payroll and income tax (adjusted to wage, salary, any other remuneration paid, the number of persons that receives a remuneration or otherwise) directly related to the provision of the Services and Products, levied by a government body now or in the future against the Supplier, or that are owed by the Supplier, or a third party engaged by or affiliated with the Supplier.

3.2 The Supplier indemnifies Hyrde against claims of government bodies related to non-payment of the required turnover tax, contributions, and taxes as set out in the previous article on the part of the Supplier or a third party engaged by or affiliated with the Supplier.

- 3.3 The Supplier, or any third party engaged by or affiliated with the Supplier, is not entitled to recover taxes, levies, and contributions within the meaning of this article from Hyrde.
- 3.4 Parties undertake to revise, amend or change this article in the event that the Sequential Liability Act (*Wet Ketenaansprakelijkheid*) and/or the Recipients' Liability Act (*Wet Inlenersaansprakelijkheid*) is amended or changed, respectively, so as to reflect the revised statutory requirements.

#### 4. **Delivery**

- 4.1 The Supplier will deliver the Services and Products at the time and place agreed upon in the Agreement.
- 4.2 Delivery times/dates are binding, which means that if Delivery is not made in time, the Supplier will be in default by operation of law, without a written notice of default from Hyrde being required in this regard. As soon as the Supplier becomes aware, or expects, that the Services and Products cannot be delivered within the period agreed upon, the Supplier must inform Hyrde in writing immediately.
- 4.3 If the Supplier does not meet the agreed time of Delivery for reasons other than force majeure (non-attributable failure as defined in article 6:75 of the Dutch Civil Code), Parties shall immediately discuss an appropriate solution and Hyrde shall at any time have the right to cancel the relevant Delivery. If Supplier fails to meet its Delivery times for more than 3 times in a year, Hyrde may terminate the Agreement in full or in part, without prejudice to Hyrde's right to compensation of damage.
- 4.4 The Supplier will provide a statement of Delivery as proof of Delivery, which is to be signed by Hyrde immediately after the Delivery has taken place. Such statement will not affect Hyrde's other rights under these General Purchase Conditions or the Agreement. The Supplier bears the risk of damage to, or loss of, the result of the Service and/or Product until the Service and/or Product is accepted by Hyrde by way of signing the statement.
- 4.5 To the extent that the Parties agree that the result of a Service and/or Product to be delivered is transferred to the ownership of Hyrde, it holds that the result, or the Product, remains in the ownership of the Supplier until Hyrde has accepted the Service or Product conform the agreed acceptance procedure.
- 4.6 Unless otherwise agreed, the Supplier bears full and ultimate responsibility for the delivery of the agreed Services and Products.

#### 5. **Personnel**

- 5.1 The Supplier must comply strictly and fully with the statutory provisions, duty of care, collective labour agreements, safety regulations and other obligations applicable with the Supplier (as employer) in the performance of the Agreement. The Supplier indemnifies Hyrde against any damage arising from a failure to perform the aforementioned obligations, its failure to do so in time or in full and/or violation of the same.
- 5.2 The Supplier warrants that all persons and/or workers engaged by the Supplier or by third parties on behalf of the Supplier in the performance of the work will observe all laws and regulations applicable to it. The Supplier indemnifies Hyrde – without prejudice to Hyrde's other rights – against any damage arising from the failure to perform the obligations stated in this article.
- 5.3 The Supplier warrants in respect of Hyrde that the Supplier or the third parties engaged on the Supplier's behalf will only deploy workers that are authorized to perform the work arising from the Agreement and whose identity can be established by Hyrde.
- 5.4 If work must be performed at Hyrde, Hyrde will ensure that the Supplier's Personnel gains access to the place where the activities related to the performance of the Agreement are to be carried out and will ensure that the necessary facilities are available.

## 6. Privacy legislation

To the extent that the Services to be provided by the Supplier involve the processing of personal data, the Supplier, as processor within the meaning of the Privacy Legislation, will ensure that it complies with all obligations under the Privacy Legislation, and Hyrde and Supplier will conclude the data processing agreement provided by Hyrde.

## 7. Intellectual Property Rights

7.1 All intellectual property rights that can be exercised, now and in the future, with regard to the results of Services and/or Products delivered by the Supplier rest with:

(a) Hyrde, to the extent that it concerns Services and/or Products, including, but not limited to, Software, or parts thereof, designed or manufactured specifically for Hyrde and/or realized on the basis of instructions or designs from Hyrde. For the purposes of this article, Software is also taken to mean the whole of project-specific software, in source code and, to the extent applicable, in object code, including all sub-programs and Documentation belonging to this software, among which functional and technical designs are also understood. To the extent required, the Supplier transfers hereby in advance all intellectual property rights without any compensation required to Hyrde unconditionally, which transfer Hyrde hereby accepts. If this transfer or the entry in the relevant registers requires a deed or other formal act, the Supplier undertakes to cooperate unconditionally, or, respectively, if the situation arises, states that it will provide an irrevocable power of attorney to Hyrde to effect this.

(b) the Supplier, to the extent that it concerns generic Software that is not designed or manufactured specifically for Hyrde. In those cases, the Supplier will grant Hyrde and its Customers a non-exclusive, irrevocable license to that Software for an indefinite period of time. At the request of Hyrde, Hyrde and the Supplier will enter into an escrow agreement, in which it is laid down that the Supplier, in cases to be further determined, will provide Hyrde with the source code and other relevant technical documentation relating to the Software for continuity purposes.

7.2 The Supplier indemnifies Hyrde against third-party claims relating to any infringement of intellectual property rights of the relevant third parties, and against similar claims with regard to know-how, including unlawful competition. The Supplier undertakes, for its own account, to take all measures that might help prevent stagnation at Hyrde or limit the extra costs and/or damage to be incurred by Hyrde.

## 8. Invoicing and Payment

8.1 The Supplier will send invoices to Hyrde stating the date, name and number of the Agreement, customer number, the period and/or (sub)Products to which the invoice relates and other data and/or documents stated by Hyrde to the Supplier in writing, which substantiate the content of the invoices. At Hyrde's request, the Supplier will invoice digitally.

8.2 If payment is made on the basis of subsequent calculation, the Supplier will charge the agreed amounts to Hyrde in a properly specified manner and the hours worked and the materials used and/or other relevant aspects of the Products delivered will be specified in an annex to the invoice on an hourly time sheet/bill of material signed by Hyrde.

8.3 The Supplier will separately invoice the additional work ordered by Hyrde in writing. The nature and scope of the additional work performed will be explicitly stated and specified in the invoices.

8.4 If the conditions in articles 8.1, 8.2 and 8.3 have been met and the invoice has been approved internally by Hyrde, payment will be made within sixty (60) days after receipt of the invoice, unless specifically agreed otherwise. Payment by Hyrde does not imply approval of the Products and/or Services delivered or constitute a waiver of any right vested in Hyrde.

8.5 Supplier has the obligation to provide a satisfactory bank guarantee upon request of Hyrde, if Hyrde is required to make an advance payment of EUR 5,000 or more.

## 9. **Warranty and Quality**

9.1 The Supplier warrants that:

- (a) the Services and/or Products to be supplied or made available by or on behalf of it and the results thereof will comply with the agreed (technical and functional) specifications for a period of at least 12 months;
- (b) the Services to be provided by or on behalf of it will be performed skilfully and comply with all applicable laws and regulations; and
- (c) its Personnel meets and will continue to meet the agreed qualities and requirements with regard to training, expertise, experience and security.

9.2 If the creation of the Services and Products requires cooperation with third parties engaged by Hyrde, the Supplier undertakes to make every effort to ensure that the aforementioned cooperation takes place successfully.

9.3 In addition to the provisions of this article 9, Hyrde is entitled to have a penetration test performed by an independent expert to be appointed by it in accordance with the relevant provisions of the ICT security guidelines for Web applications of the National Cyber Security Centre, with regard to the Supplier's organization, in order to assess whether the Supplier fulfils its obligations with regard to information security in these General Purchase Conditions and the Agreement. The Supplier is obliged to cooperate with such a penetration test, and will carry out and follow the recommendations - which Hyrde will share with the Supplier - for improvement, as soon as possible. The costs of the penetration test will be divided on a 50/50 basis between Hyrde and the Supplier, unless the penetration test shows that information security does not comply with current technological standards, in which case said costs will be borne by Supplier. As an alternative, Supplier may provide to Hyrde a copy of a relevant and recent certificate of an accredited assessment centre confirming that the software complies with the ICT security guidelines referred to above or to any similar guidelines.

## 10. **Liability**

10.1 The Supplier is liable for all damage caused to or by the Services and Products delivered as a result of errors or defects in the Services and Products delivered.

10.2 The Supplier's liability also extends to damage arising as a result of failing to meet the agreed delivery time, damage to third party products and loss of profits incurred by Hyrde or third parties as a result of errors or defects in or in connection with the Services and Products delivered.

10.3 The Supplier will indemnify Hyrde against any claim by third parties for compensation of any damage or payment of fines, taxes and the like arising from or in connection with the delivery of the Products or the performance of the Services by the Supplier, and/or which is the result of the failure of the Services and Products delivered by the Supplier to comply with the legal or other requirements set by the foreign, national or regional trade organizations, the EU Commission or by the government.

10.4 Unless caused by a party's intent or gross negligence, Supplier's aggregate liability under this Agreement shall be limited to the higher of (i) EUR 500,000 and (ii) the amount paid out under the relevant insurance policy of Supplier. Hyrde will not be liable for any damage suffered by the Supplier except in the event of intent or gross negligence.

10.5 Supplier shall take out and maintain in full force and effect a liability insurance of not less than Euro 2 million in respect of each and every claim or series of claims arising from the same incident, such insurance to include liabilities as Supplier may incur by reason of failure to manufacture and supply the Products and/or Services including, without limitation, in respect of product liability claims. The existence of such insurance shall not be construed as a limitation of Supplier's liability hereunder and shall not affect the liability of Hyrde as set out in this Agreement. Supplier shall produce for inspection by Hyrde valid evidence of insurance in respect of such insurance cover.

## 11. Confidentiality

11.1 The Parties will observe secrecy with regard to confidential information, drawings and other documents received from the other Party. The Parties are not permitted to make the same information, drawings and documents available to a third party in any way whatsoever without the other Party's prior consent. The Parties will impose this obligation on their Personnel, including but not limited to hired personnel and/or self-employed workers without employees.

11.2 Unless agreed otherwise, the Supplier will not mention the Agreement in publications or advertisements without Hyrde's written permission.

## 12. Force Majeure (*overmacht*)

12.1 In the event of (temporary) force majeure, Hyrde will be (temporarily) released from its obligations under the Agreement. If the force majeure has not ceased to exist within three weeks, Hyrde will be entitled to terminate the Agreement and any orders with immediate effect and without any further liability. In this case, the Supplier is not entitled to compensation.

12.2 The term 'force majeure' is understood to mean nothing else or more than as referred to in article 6:75 of the Dutch Civil Code.

## 13. Termination

13.1 Each Party may terminate this Agreement for convenience against the end of its term, or any time thereafter, with a notice period of 3 months. Any Orders made before termination shall continue to be delivered by Supplier to Hyrde, subject to the terms of this Agreement.

13.2 In addition to the other rights vested in it, Hyrde may at all times terminate the Agreement in whole or in part, with immediate effect and without judicial intervention and without any obligation to pay damages to the Supplier, if the Supplier is unable to pay his debts, applies for suspension of payments or offers his creditors a composition, is declared bankrupt, if the Supplier ceases its business activities or a substantial part thereof, or if attachment is made in respect of substantial debts of the Supplier and that attachment is maintained for at least one month.

13.3 In the event of a failure by the Supplier to perform any of its obligations under the Agreement, Hyrde is entitled to terminate the Agreement in whole or in part with immediate effect and without judicial intervention, in accordance with the provisions of section 6:265 of the Dutch Civil Code.

13.4 Obligations, which by their nature, are intended to continue even after termination of the Agreement will remain in force after termination of the Agreement. These obligations include, inter alia: indemnity for infringement of intellectual property rights, confidentiality, product warranties, dispute resolution, applicable law and choice of an address for service.

## 14. Applicable Law and Disputes

14.1 All Agreements for the delivery of Products and/or the performance of Services, as well as all requests for quotations, are governed by Dutch law. The 1980 United Nations Convention on Contracts for the International Sale of Goods (*Weens Koopverdrag*) and its related instruments will not apply.

- 14.2 Disputes between Parties will exclusively be submitted to the Netherlands Arbitration Institute (NAI) in Rotterdam, unless the Parties agree to submit the dispute to the competent court in the district of Rotterdam.

## CHAPTER 2 - DELIVERY OF MOVABLE PROPERTY

The provisions in this chapter apply if the Supplier sells and delivers Products to Hyrde.

### 15. Orders and Delivery

- 15.1 Hyrde may at any time issue to Supplier a purchase order (**Order**) for the Products to be delivered to Hyrde as provided in article 15.2. Any Orders shall be confirmed or rejected in writing by Supplier within 24 hours of receipt, which shall then be binding. The accepted Order shall constitute a firm order for Products that is subject to the terms of this Agreement and shall be binding on Supplier.
- 15.2 Following receipt of an Order from Hyrde, Supplier shall, at its own expense, deliver, or procure the delivery, of the Products DDP (Incoterms 2010) to the Delivery Point as set out in the Order. Hyrde is entitled to require that the Supplier dispose of packaging and packaging material supplied by it free of charge.
- 15.3 Supplier must comply with all delivery instructions specified in the Order, and shall ensure that each delivery of Products is:
- (a) delivered on time and in full;
  - (b) properly packed, secured and marked in such manner as to reach the Delivery Point (or any further destination of which Supplier is made aware) in good condition and fit for Hyrde's intended purpose; and
  - (c) accompanied by a delivery note quoting the relevant purchase order number,
- and Hyrde is neither liable for nor required to take delivery of any Products which are not so packed, secured and marked.
- 15.4 Hyrde may inspect all shipments of moveable goods within 7 days of receipt on any visual defects. As of the 7th day of receipt, Hyrde shall have deemed to have accepted the shipments and Supplier shall be released from liability of any defects, which were clearly visible upon receipt. Final acceptance of the Products shall take place upon successful Activation of the Products.
- 15.5 Supplier recognises that late delivery of the Products will have a significant impact on Hyrde's obligations to its Customers. Hyrde requires as a condition of this Agreement deliveries to be on time. Accordingly, without prejudice to Hyrde's other rights whether hereunder or at law, if the Products are not delivered on the due date, Hyrde shall be entitled to deduct from the total price of the Order or to claim from Supplier by way of liquidated damages for delay, 1.00 (one) per cent of the price for every week's delay up to a maximum of 5.00 (five) per cent. Payment of the penalty shall not exempt Supplier from its obligation to deliver the Products.

### 16. Warranty

- 16.1 During the agreed warranty period that starts as of Activation, the Supplier will fix any Errors in the Products as well as in parts supplied by the Supplier within the scope of the warranty, or have them fixed, if these Errors have been reported by Hyrde to the Supplier within that period.
- 16.2 All replaced parts will become the property of the Party that owns the Products. The warranty obligation lapses if these Errors are fully or partially the result of incorrect, careless or incompetent use, external causes such as for example fire or water damage, or if Hyrde makes or causes changes to be made to the Products or to the parts delivered by the Supplier without the Supplier's permission.

16.3 Activities and repair costs outside the scope of this warranty will be charged retrospectively by the Supplier in accordance with its usual rates.

## 17. **Indemnity**

17.1 Supplier shall be liable for and shall fully and promptly indemnify and keep fully and promptly indemnified Hyrde against any costs (including legal costs on an indemnity basis), claims, charges, demands, losses (including loss of profit, loss of business and loss of goodwill), liabilities, damages or expense suffered or incurred by Hyrde arising directly or indirectly related to:

- (a) the timely delivery or replacement in kind of the quantity of Products (or any additional costs incurred in procuring alternative Products from a third party);
- (b) the costs of destruction, repair or replacement of any materials or products with which defective Products have been incorporated prior to discovery of the defect;
- (c) any costs of returning any storage facility, machines, tools, fixtures, fittings, moulds or other product contaminated by the defective Products to the condition they would have been in were it not for the defective Products;
- (d) any liability arising in respect of applicable law or regulations concerning any Products which do not comply with this Agreement and reach either a wholesaler, retailer and/or the end consumer (including by means of a product which incorporates the defective Products); and
- (e) any and all costs, claims, demands or expenses incurred in failing to deliver (on time), withdrawing or recalling from Customers or repairing (as the case may be) defective Products supplied by Supplier or any products of which the defective Products were intended to be a component part.

## **CHAPTER 2 - DEVELOPMENT AND IMPLEMENTATION OF SYSTEMS AND SOFTWARE**

The conditions contained in this chapter apply if the Supplier and Hyrde have concluded an Agreement with regard to the development and implementation of Systems and/or Software.

## 18. **Software Development**

18.1 The Parties will specify in the Agreement which Software will be developed and on the basis of which standards. The Supplier will carry out the development with due care on the basis of data to be provided by Hyrde.

18.2 The Software will be developed on the basis of standards accepted by Hyrde. In selecting the standards to be used, interoperability with Systems in use at Hyrde, simple management and reduction of costs are used as a starting point.

18.3 The Supplier is entitled, but not obliged, to verify the correctness, completeness or consistency of the data or specifications made available to it and, if any imperfections are discovered, to suspend the agreed activities until Hyrde has removed the imperfections in question.

18.4 The Supplier will, if he is responsible for the design of the test environment, set it up in such a way that it is logically separated from the production environment.

18.5 The source code of the Software specifically developed for Hyrde and technical documentation produced during the development of the Software will be delivered to Hyrde under the circumstances and conditions defined in the Agreement.

## 19. **Installation of the Software**

19.1 The Software will only be installed by the Supplier if this has been agreed in the Agreement.



19.2 As soon as the Parties believe that the installation has been completed, a certificate of installation will be drawn up and signed by the Parties. Such a certificate is without prejudice to the provisions of article 22.

## 20. **Implementation**

20.1 The Software will only be implemented by the Supplier in the specified environment and/or Product if this has been agreed in the Agreement.

20.2 Implementation will take place in the manner to be agreed in the Agreement. The implementation will be completed within a term to be agreed upon after delivery of the Software.

20.3 Hyrde will cooperate in the implementation, which includes making material and personnel capacity available, as specified in the Agreement.

20.4 As soon as the Parties believe that the implementation has been completed, a certificate of implementation will be drawn up and signed by the Parties. Such a certificate is without prejudice to the provisions of articles 21 and 22.

## 21. **Acceptance**

21.1 If an Acceptance Test has been agreed upon in writing, the Parties will proceed to carry out the Acceptance Test after delivery or, if an installation or implementation to be carried out by the Supplier has been agreed upon, after completion of the installation and implementation, respectively. The test period will be laid down in the Agreement.

21.2 The Parties will in joint consultation lay down procedures in the Agreement with regard to the working method for the execution of the Acceptance Test of the Software.

21.3 If, during the performance of the Acceptance Test agreed upon, it turns out that the Software contains Errors that impede the progress of the Acceptance Test, the test period will be interrupted until the Software has been modified in such a way that this impediment is removed.

21.4 Immediately after the Acceptance Test has taken place, the Parties will draw up and sign an official report. The Errors displayed by the Software will be recorded in the official report, and it will also state whether the Software has been approved or rejected by Hyrde.

21.5 If, during the performance of the agreed Acceptance Test, it turns out that the Software contains Errors, the Supplier will repair the reported Errors within a reasonable period of time, whereby the Supplier is entitled to install temporary solutions in the Software, which it will remove after the Error(s) have been repaired. If the Supplier fails to perform its obligation to repair Errors within a reasonable period of time, Hyrde will be entitled, without prejudice to its further rights, to have these Errors repaired either by itself or by third parties, subject to prior notification at the expense of the Supplier.

21.6 If the Software is approved by Hyrde, the date on which the Acceptance Certificate has been signed will be considered the date of acceptance. If the Software has been developed in phases, the entire Software will be tested prior to acceptance of the results of the final phase, in accordance with the provisions of paragraphs 2 up to and including 5 of this article.

21.7 The Software will be deemed to have been accepted by the Parties:

(a) if an Acceptance Test has been agreed in writing between the Parties: on the date of signature of the Acceptance Certificate;

(b) if no Acceptance Test has been agreed between the Parties: by signing the certificate of Delivery or, if an installation or implementation to be carried out by the Supplier has been agreed, upon completion of the installation in accordance with the provisions of article 19.2, or the implementation in accordance with the provisions of article 20.4

- 21.8 After acceptance of the Software, the Supplier will only be obliged to repair Errors in the Software if:
- (a) Hyrde can claim rights from the warranty in accordance with the provisions of article 22;
  - (b) the Errors would not have occurred if the Supplier had properly fulfilled agreed maintenance obligations; or
  - (c) the Errors are detected and reported to the Supplier within twelve (12) months after Acceptance, which Errors were concealed during the Software Acceptance Test and could not reasonably have been detected by Hyrde.

## 22. **Software Warranty**

- 22.1 During a period of twelve (12) months after Delivery, or, if an Acceptance Test has been agreed between the Parties, twelve (12) months after acceptance, the Supplier will repair any Errors, if these have been reported by Hyrde to the Supplier within that period. The Supplier undertakes to take such measures within a reasonable period of time after the Errors have been reported in writing, which will lead to the Errors being repaired in the shortest time possible. If the Supplier fails to perform its obligation to repair Errors within a reasonable period of time, Hyrde will be entitled, without prejudice to its further rights, to have these Errors repaired either by itself or by third parties, subject to prior notification at the expense of the Supplier.
- 22.2 The repair will be carried out free of charge during the warranty period. The Supplier may charge its usual rates and the costs of repair if the Supplier demonstrates that there are usage errors or improper use by Hyrde or other causes that cannot be attributed to the Supplier.
- 22.3 The Supplier warrants that the Software:
- (a) complies with the agreed specifications regarding functionality, system requirements and performance as set out in the Agreement;
  - (b) even in the event of a peak load (when the average activity of the resources of the system amounts to 90% or more), contains the agreed characteristics as laid down in the Agreement;
  - (c) is written in an efficient, sound and coherent manner;
  - (d) is suitable for use in connection with the software and Product described in the Agreement to be used by Hyrde;
  - (e) complies with applicable safety requirements and laws and regulations; and
  - (f) for a period of at least three (3) years after acceptance, can be maintained and managed by the Supplier.

## 23. **Maintenance**

- 23.1 The Supplier undertakes, at Hyrde's first request, to enter into a maintenance agreement with respect to the Software for a period of at least three (3) years, calculated from the date of acceptance.
- 23.2 If no maintenance agreement is concluded between the Parties and the Supplier has performed any work on the Software during the warranty period, the Supplier undertakes, at Hyrde's first request, to issue a certificate at the end of the warranty period showing that the Software was maintained during the warranty period, noting the date up to which this took place and what activities were performed.

## 24. **Documentation**

- 24.1 The Supplier will provide Hyrde with sufficient Documentation on the characteristics and possibilities for using the Software. The scope and type of Documentation is laid down in the Agreement. The Documentation should be such that:
- (a) it provides a correct, complete and detailed description of the Software to be supplied by the Supplier and its functions;
  - (b) users can easily make use of all the possibilities offered by the Software;
  - (c) Maintenance of the Software can be carried out by third parties.
- 24.2 The Supplier will ensure that the Documentation will be replaced, changed or adjusted as soon as possible at its expense, if it becomes clear at any time during the use of the Software by Hyrde that the Documentation contains incorrect information or otherwise is incomplete, inadequate, unclear or outdated. After the expiry of the warranty period of article 22, these changes and adjustments by the Supplier will be made on payment of the related costs, unless the Parties have entered into a maintenance agreement that includes such repair.
- 24.3 The Supplier will make the Documentation available to Hyrde in paper and electronic form.

## **CHAPTER 3 - SOFTWARE MAINTENANCE AND MANAGEMENT**

The conditions stated in this chapter apply if the Supplier and Hyrde have concluded an agreement on the Maintenance and/or Management of Software.

### 25. **The Supplier's Rights and Obligations**

- 25.1 During the term of the Agreement, the Supplier undertakes to fix Errors reported by Hyrde to the Supplier in accordance with article 27, as well as to carry out the other Maintenance agreed upon in the Agreement.
- 25.2 During the term of the Agreement, the Supplier undertakes to perform the Management agreed in the Agreement in respect of the Software.
- 25.3 The Supplier will provide for sufficient knowledge and experience to ensure the operation of the Software for the duration of the Agreement.
- 25.4 For Software Maintenance and Management, the Supplier will set up environments for testing and development that are logically separate from the production environment.
- 25.5 The Supplier hereby declares that it respects the intellectual property rights of third parties which are based on the Software and Documentation that has been or is made available to the Supplier indirectly or immediately by Hyrde for management and use purposes and that it does everything reasonably necessary to prevent a possible infringement of the intellectual property rights by the Supplier.

### 26. **Hyrde's Rights and Obligations**

- 26.1 At the Supplier's request, Hyrde's competent Personnel will be present in the execution of the agreed activities for consultation purposes. Hyrde has the right to be present at all work to be carried out for Hyrde.

### 27. **Maintenance**

- 27.1 The Agreement will lay down which forms of Maintenance have been agreed upon for a specific case and which specific conditions apply to them. The Software Maintenance may include modifications to Product, Software and/or a system due to external developments or aimed at adding functionality due to new functional requirements.

- 27.2 The Supplier undertakes to investigate the possibility of improving the quality of the Software sufficiently and to make new Versions of the Software available to Hyrde as soon as there is reason to do so. The Supplier will inform Hyrde as early as possible about (the results of research into) new Versions, as well as about the content and consequences with regard to the Software. Hyrde is not obliged to accept new Versions.
- 27.3 In connection with the performance of Maintenance, Errors will be divided into categories by the Parties, as further specified in the Agreement.
- 27.4 If an Error occurs, the Supplier will commence Maintenance within the reaction times agreed by category in the Agreement and the Supplier will resolve the Errors within the period specified in the Agreement.
- 27.5 The Supplier is entitled to repair Errors in the Software by providing a temporary solution in the form of a detour to circumvent the Error in question. If the Parties agree that an Error cannot be otherwise fixed, the Supplier is entitled to make a problem-avoiding restriction in the Software. This restriction will affect the functions recorded in the Software as little as possible. If Hyrde finds any loss of functionality unacceptable, Hyrde will be entitled to have an independent investigation carried out. The Supplier will fully cooperate with this investigation. The costs to be claimed by the independent investigator will be for Hyrde's account, but they will be recovered from the Supplier if the results of the investigation justify this.
- 27.6 If the Product in combination with which the Software functions is modified – is obliged to adapt the Software as soon as possible for use on the modified Product, at Hyrde's expense.
- 27.7 Repair of mutilated or lost data does not fall under Maintenance, unless it can be established that the said mutilation or loss of data is a direct consequence of gross negligence or intent on the part of the Supplier's Personnel.
- 27.8 The Maintenance obligation will lapse if and insofar as the Supplier demonstrates that an Error occurred due to the fact that:
- (a) Hyrde used the Software in an improper manner;
  - (b) Hyrde has made changes to the Supplier's Software without the Supplier's permission, unless Hyrde demonstrates that the Error did not occur due to the changes or would have occurred without the changes;
  - (c) Errors are due to Hyrde or to the use of Software, Product or materials not supplied or advised by the Supplier; or
  - (d) activities due to the investigation or repair of Errors resulting from the above exclusions are not part of the Supplier's obligations and will be charged separately by the Supplier in accordance with the agreed rates.

## 28. **Reporting Errors**

After the occurrence of an Error Hyrde will immediately inform the Supplier of it in the manner agreed upon in the Agreement, including by e-mail or telephone, at the numbers and/or addresses specified in the Agreement.

## 29. **Place of Maintenance**

- 29.1 The Maintenance will in principle be performed at the Supplier, unless otherwise agreed in the Agreement. Work that cannot reasonably be performed at the Supplier will be carried out at Hyrde.

29.2 Maintenance can be carried out by remote diagnosis if there is no objection to this from a security point of view. The Supplier will assess on a case-by-case basis whether this is possible and may make the necessary Product and communication facilities available, if this has been agreed in the Agreement. The Supplier will take all safety measures to prevent virus contamination of Product and/or Software of Hyrde, illegal use of the connection and comply with the conditions for remote diagnosis laid down in the Agreement.

### 30. **Acceptance**

30.1 The Supplier is entitled to subject the Products made available by Hyrde or a third party to the Supplier in the context of the Agreement to an Acceptance Test. The Acceptance Test, the corresponding time schedule, and acceptance criteria are delivered by the Supplier and included in the Agreement.

30.2 On the basis of the Acceptance Test and with due observance of the provisions of the Agreement, Hyrde will remove any obstacles that stand in the way of acceptance.

30.3 Hyrde is entitled to subject the result of the work performed by the Supplier to an Acceptance Test. Errors found by Hyrde on the basis of such a test will be fixed by the Supplier within the agreed periods and for the rest in the shortest time possible.

### 31. **Software of the Supplier**

31.1 If and insofar as the Supplier makes software from third parties available to Hyrde, the Parties are in principle obliged to follow the release policy of these third parties.

31.2 If there is any doubt with regard to the effectiveness of implementing a new version of third parties, its implementation will only take place after consultation and with both Parties' consent. If applicable, the Version in use or the Software as a whole may be frozen, whereby it is accepted that further expansion of functionality is impossible.

## **CHAPTER 4 - CLOUD AND HOSTING SERVICES**

The provisions stated in this chapter apply if the Supplier delivers Cloud and Hosting Services to Hyrde.

### 32. **Cloud and Hosting**

32.1 Hyrde is and remains the owner of all data, information, instructions and other documentation that is processed in the context of the Cloud and Hosting Services (**Data**), including all intellectual property rights thereon, which includes, but is not limited to, copyrights and/or database rights.

32.2 On request by Hyrde, the Supplier will provide proper evidence demonstrating that the Supplier has the relevant certificate. If the Supplier and/or the third parties engaged by the Supplier do not have the aforesaid certificate, the Parties can agree that the Supplier and/or the third parties engaged by the Supplier will provide a declaration of applicability, confirming that the principles set out in the aforesaid certificate are applied to the systems and the procedure of the Supplier and/or third parties engaged by the Supplier. The Supplier is only entitled to engage third parties after having obtained prior written permission from Hyrde.

32.3 Supplier will perform the Cloud and/or Hosting Services in a professional and skilled manner, in accordance with the latest state of the art and the market standard applicable at the time. Moreover, the Supplier will at least once a week make a complete back-up of Hyrde's data that it has in its possession and will at least have a backup centre or other backup facility. The Supplier will store the backup for a period to be agreed between the parties. If no agreements to this end have been made, the Supplier will store the backup data for a period to be further determined by Hyrde. The Supplier will handle and store the backup with due care.

33. **Exit Scheme**

- 33.1 On termination of the Agreement, for whatever reason, the Supplier will return to Hyrde all data, information, instructions and documentation belonging to Hyrde that is related to the Agreement, in a file format to be determined by Hyrde. Hyrde will check the Data, information, instructions and documentation provided by the Supplier after receipt. On timely receipt of the complete Data, information, instructions and documentation, Hyrde will issue a statement of acceptance to the Supplier. The Supplier will delete all Data, information, instructions and documentation from its systems within two days of the date of the statement of acceptance by Hyrde. The Supplier must cooperate with the provisions of this article and is not entitled to any (additional) compensation (of costs).