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# General Terms and Conditions

Revision 1 (May 2023)

## Scope

Oddity.ai outlines their General Terms and Conditions in this document.

# Definitions

## Clause 1. Applicability

- 1.1. These Terms and Conditions apply to all offers and contracts pursuant to which Oddity delivers goods and/or services of any nature whatsoever to the Customer. Departures from and additions to these general terms and conditions shall only be valid if they are agreed between parties in writing. The applicability of Customer's terms and conditions are specifically excluded.

## Clause 2. Offers

- 2.1 All offers and other communications of Oddity are subject to confirmation unless Oddity has indicated otherwise in writing.
- 2.2 The Customer guarantees that the information that it has provided or that has been provided on its behalf to Oddity and on which Oddity has based its offer, is accurate and complete.
- 2.3 Acceptance of the offer by the Customer must be in writing. If the Customer fails to do so, but nevertheless agrees to Oddity carrying out work within the framework of the Agreement, or at least makes that impression, the offer shall be deemed as accepted.
- 2.4 Any Agreement in any form shall be subject to these General Terms and Conditions at all times, unless explicitly agreed otherwise in writing.

## Clause 3. Provision of the Services

- 3.1 Following the conclusion of the Agreement, Oddity shall provide the services as soon as possible, in accordance with the offer, taking into account any reasonable wishes of the Customer. Insofar as not agreed otherwise in writing, Oddity guarantees that the Services shall be provided to the best of its abilities, while exercising due care and workmanship.
- 3.2 If and insofar required by a proper provision of the services, Oddity is entitled to have certain work carried out by third parties. Oddity shall inform the Customer of this timely in advance. Any additional and/or unforeseen costs relating to this shall be payable by the Customer, unless agreed otherwise.
- 3.3 The Customer is obliged to do and omit everything that is reasonably required and desirable in order to facilitate a timely and correct provision of the services. In particular, the Customer shall ensure that all information, of which Oddity indicates that it is required or with regard to which the Customer can reasonably understand that it is required for the provision of the services, is made available to Oddity in time.

- 3.4 If applicable, Oddity shall provide the Customer with an administrative username and password. This information gives the Customer access to an administrative account and a management tool that enables the Customer to manage provision of the services as it sees fit and to manage accounts for individual users and adjust the options and restrictions for these individual users of the services, all this within the limits stated in the offer or other accessible and recognisable location for the Customer.
- 3.5 Every action through the administrative account or an account of an individual user is deemed to have been effectuated on the responsibility and risk of the Customer. In the event of suspected abuse of an account, the Customer must notify Oddity of this as soon as possible.
- 3.6 Oddity has the right to (temporarily) decommission and/or restrict the use of products and services delivered, or not to deliver them or to a limited extent only, if the Customer fails to fulfil an obligation towards Oddity under the Agreement or if it acts in breach of these terms and conditions.

#### **Clause 4. Delivery**

- 4.1 At its discretion, Oddity shall deliver the software on the agreed type of data carrier or, if no agreements have been made in this regard, on a type of data carrier determined by Oddity, or shall make the software available to the Customer online. At Oddity's discretion, any agreed user documentation shall be made available in printed or digital form in a language determined by Oddity.
- 4.2 Oddity shall only install the software at the Customer's business location if this has been agreed between the parties. If no agreements have been made for the purpose, the Customer shall itself install, organise, parameterise, tune and, if necessary, modify the hardware and operating environment used.

#### **Clause 5 Acceptance**

- 5.1 If the parties have not agreed an acceptance test, the Customer shall accept the software in the state that it is in when delivered ('as is, where is'), therefore with all visible and invisible errors and defects, without prejudice to Oddity's obligations under the warranties as set out in Clause 15. In the aforementioned case, the software shall be deemed to have been accepted by the Customer upon delivery or, if installation by Oddity has been agreed in writing, upon completion of installation.
- 5.2 In these general terms and conditions, 'error' means substantial failure of the software to meet the functional or technical specifications of the software expressly made known by Oddity in writing and, if all or part of the software concerns customised software, to meet the functional or technical specifications expressly agreed in writing. An error only applies if it can be demonstrated by the Customer and if it is reproducible. The Customer must report errors without delay. Any obligation of Oddity is limited to errors

within the meaning of these general terms and conditions. Oddity does not have any obligation whatsoever with respect to other defects in or on the software.

- 5.3 The parties shall deem the software to have been accepted if the Customer uses the software in any way for production or operational purposes: at the time at which this use occurs.
- 5.4 The Customer may not refuse to accept the software for reasons that are not related to the specifications expressly agreed in writing between the parties and, furthermore, may not refuse to accept the software because of the existence of minor errors, these being errors that do not reasonably prevent the operational or productive use of the software, the foregoing without prejudice to Oddity's obligation to fix these minor errors in the context of the Warranties referred to in Clause 15. In addition, acceptance may not be refused because of aspects of the software that can only be assessed subjectively, such as aesthetic aspects of user interfaces.
- 5.5 If the software is delivered and tested in phases and/or parts, non-acceptance of a certain phase and/or part shall be without prejudice to the acceptance of a previous phase and/or a different part.
- 5.6 Acceptance of the software in one of the ways referred to in this clause shall serve to discharge Oddity of its obligations regarding making the software available and delivering the software and, if installation of the software by Oddity has also been agreed, of its obligations regarding installation.
- 5.7 If despite a reasonable number of revisions and motivations the Customer continues to reject the result, Oddity is entitled to terminate the Agreement.
- 5.8 Exceeding an agreed delivery time for whatever reason does not constitute a right to compensation, unless agreed otherwise in writing. Oddity shall make reasonable efforts to comply to the greatest extent possible with the terms and delivery periods and/or dates and delivery dates, whether or not these are firm deadlines and/or dates, that it has specified or that have been agreed between the parties. The interim dates and delivery dates specified by Oddity or agreed between the parties shall always apply as target dates, shall not bind Oddity and shall always be indicative. If a term is likely to be exceeded, Oddity and Customer shall consult with each other about the consequences of the term being exceeded in relation to further planning.
- 5.9 In all cases, therefore also if the parties have agreed firm deadlines and delivery periods or dates and delivery dates, Oddity shall only be in default as a result of a period of time being exceeded after the Customer has declared Oddity to be in default in writing and a reasonable term that the Customer granted to Oddity to remedy the breach has passed. The notice of default must describe the breach as comprehensively and in as much detail as possible in order to give Oddity the opportunity to respond adequately.

- 5.10 If it has been agreed that the work under the contract is to be performed in phases, Oddity shall be entitled to postpone the start of a phase's work until the Customer has approved the results of the preceding phase in writing.
- 5.11 Oddity shall not be bound by a date or delivery date or term or delivery period, whether or not final, if the parties have agreed an amendment to the content or scope of the contract (additional work, a change of specifications and so on) or a change in approach with respect to performance of the contract, or if the Customer fails to fulfil its obligations arising from the contract or fails to do so on time or in full. The need for or occurrence of additional work during performance of the contract shall never constitute a reason for the Customer to give notice of termination or to rescind (in Dutch: 'ontbinden') the contract.

## **Clause 6 Right of use and restrictions on use**

- 6.1 Oddity shall make the agreed computer programs and agreed user documentation, hereinafter referred to as the 'software', available to the Customer for use for the duration of the contract on the basis of a licence for use. The right to use the software is non-exclusive and may not be transferred, pledged or sublicensed.
- 6.2 Oddity's obligation to make available and the Customer's right of use extend only to the software's object code. The Customer's right of use does not extend to the software's source code. The software's source code and technical documentation prepared during the development of the software shall not be made available to the Customer, not even if the Customer is prepared to pay a financial amount for the source code and technical documentation.
- 6.3 The Customer shall always strictly comply with the agreed restrictions on the use of the software, regardless of the nature or content of these restrictions. If the parties have agreed that the software may only be used in combination with certain hardware, the Customer shall in the event of any malfunction of this hardware be entitled to use the software on other hardware with the same qualifications during the time that the original hardware remains defective.
- 6.4 Oddity may require that the Customer only start using the software after having received one or more codes needed for use from Oddity, Oddity's supplier or the producer of the software. Oddity is always entitled to take technical measures to protect the software against unlawful use and/or against use in a manner or for purposes other than the manner or purposes agreed between the parties. The Customer shall never remove or bypass technical measures intended to protect the software or have such technical measures removed or bypassed.
- 6.5 The Customer may only use the software in and for its own company or organisation and only insofar as doing so is necessary for the intended use. The Customer shall not use the software for third parties, for example in the context of Software as a Services (SaaS) or outsourcing. The Customer may never

sell, rent out, dispose of or grant limited rights to, or make available to third parties the software and the carriers on which the software is or will be recorded, in any way whatsoever for whatever purpose or under whatever title. The Customer may also not grant, whether or not remotely (online), a third party access to the software or place the software with a third party for hosting, not even if the third party concerned only uses the software for the Customer.

- 6.6 If so requested, the Customer shall cooperate without delay in an investigation into compliance with the agreed restrictions on use carried out by or for Oddity. Should Oddity so demand, the Customer shall grant Oddity access to its buildings and systems. Insofar as such information does not concern the use of the software itself, Oddity shall treat all confidential business information that it obtains from the Customer or at the Customer's business location in the context of an investigation as confidential.
- 6.7 The parties maintain that the contract concluded between the parties, insofar as the object of this contract is the making available of software for use, shall never be deemed to be a purchase contract.

#### **Clause 7. Change in Services**

- 7.1 If, at the request or prior consent of the Customer, Oddity has performed work or supplied goods or services that is or are outside the scope of the agreed work and/or provision of goods or services, the Customer shall pay for this work or provision of goods or services in accordance with the agreed rates or, if no rates have been agreed between the parties, in accordance with Oddity's usual rates. Oddity is not obliged to honour such a request and may require that a separate contract be concluded in writing for the purpose. 2. Insofar as a fixed price has been agreed for the provision of services, Oddity shall on request inform the Customer in writing about the financial consequences of the additional work or additional provision of goods or services as referred to in this clause.

#### **Clause 8. Prices**

- 8.1 All prices are exclusive of turnover tax and any other levies imposed by the government.
- 8.2 All prices on the website, in offers and other documentation of Oddity are subject to programming and typing errors. No liability is accepted for the consequences of such errors. The Customer may not derive any rights or expectations from a cost estimate or budget issued by Oddity unless the parties have otherwise agreed in writing. An available budget made known to Oddity by the Customer shall only apply as a (fixed) price agreed between the parties for the performance to be delivered by Oddity if this has been expressly agreed in writing.

- 8.3 If a periodic payment obligation on the part of the Customer applies, Oddity shall be entitled to adjust, in writing and in accordance with the index or other standard included in the contract, the applicable prices and rates to the term specified in the contract. If the contract does not expressly provide for the possibility on the part of Oddity to adjust the prices or rates, Oddity shall always be entitled to adjust, in writing and with due observance of a term of at least two months, the applicable prices and rates. If the Customer does not agree to the adjustment in this latter case, the Customer shall be entitled to terminate the contract in writing within thirty days following notice of the adjustment, which termination shall take effect on the date on which the new prices and/or rates would take effect.
- 8.4 All prices stated by Oddity are in euros (EUR) and the Customer must make all payments in euros.
- 8.5 If the Customer consists of several natural persons and/or legal entities, each of these natural persons and/or legal entities shall be jointly and severally liable towards Oddity for performance of the contract.
- 8.6 Information from Oddity's records shall count as conclusive evidence with respect to the performance delivered by Oddity and the amounts owed by the Customer for delivery of this performance, without prejudice to the Customer's right to produce evidence to the contrary. The parties shall record the date or dates on which Oddity shall charge the Customer for the performance agreed in the contract. Amounts owed must be paid by the Customer in accordance with the agreed payment terms or the payment terms stated on the invoice. The Customer may not suspend any payment and may also not set off any amounts owed.

#### **Clause 9. Payment conditions**

- 9.1 Oddity shall send the Customer an invoice for the amounts payable by the Customer. The payment terms of this invoice are 30 days from the invoice date, unless the invoice or the Agreement stipulates otherwise. If the Customer fails to pay amounts due or fails to do so on time, the Customer shall owe statutory interest for commercial contracts on the outstanding amount without a demand for payment or a notice of default being required. The foregoing shall be without prejudice to Oddity's other legal and contractual rights.
- 9.2 In the event of failure to pay within the set term, the Customer is obliged to pay all judicial and extrajudicial collection costs, including the fees of lawyers, bailiffs and debt-collection agencies, in addition to the amount owed and any interest due.
- 9.3 The claim for payment is immediately due and payable in the event that the Customer is declared insolvent, has applied for a moratorium or has all of its assets seized, dies or is wound up or dissolved.
- 9.4 In the above cases, Oddity is also entitled to terminate or suspend performance of the Agreement, or any as yet unperformed part thereof, without notice of

default or legal intervention and without the Customer being entitled to compensation for any damage resulting from that.

#### **Clause 10. Development of specific works**

- 10.1 If the agreed services include the customised specific development of software, designs, documentation, recommendations, reports or other specific works, the Parties shall specify in writing which works are to be developed, what requirements and how. Oddity shall carry out this development with due care and attention, on the basis of the information to be provided by the Customer. The Customer guarantees the correctness, completeness and consistency of its instructions and information.
- 10.2 Oddity is entitled to examine the correctness, completeness or consistency of the source materials, requirements or specifications made available to it and to suspend the agreed work upon discovery of any faults until the Customer has remedied the faults in question.
- 10.3 If any source materials provided by the Customer to Oddity are protected by any intellectual property rights, the Customer guarantees that it is in the possession of all licences required for the provision to and the intended use by Oddity within the framework of the Agreement, at all times.
- 10.4 When developing the works, Oddity has the right to make use of third-party illustrations, software and components, including open source software, unless agreed otherwise. After delivery, the Customer is responsible for complying with the relevant third-party licences when using the newly developed works. Oddity shall sufficiently inform the Customer on the applicable licence terms if applicable.
- 10.5 Solely if explicitly agreed in writing, the source code of newly developed software and the technical documentation produced during the development thereof can be made available to the Customer and the Customer shall be entitled to modify the software.
- 10.6 The Customer is not allowed to sell, lease, sublicense and to dispose of newly developed works, to grant limited rights thereto or to make this available to a third party, in whichever way or for whichever purpose, even if the relevant third party solely uses the software for the Customer, unless otherwise agreed.

#### **Clause 11 Maintenance services**

- 11.1 If agreed, Oddity shall perform maintenance work with respect to the software specified in the contract. The maintenance obligation includes fixing errors in the software within the meaning of Clause 15.3 and, exclusively if agreed in writing, making new versions of the software available in accordance with Clause 12.



- 11.2 The Customer must report errors discovered in the software in detail. Following receipt of the report, Oddity shall strive to the best of its ability to fix errors and/or implement improvements in later, new versions of the software in accordance with its usual procedures. Depending on the urgency and Oddity's version and release policy, the results shall be made available to the Customer in a manner and within a term determined by Oddity. Oddity is entitled to install temporary solutions, program bypasses or problem-avoiding limitations in the software. The Customer shall itself install, organise, parameterise and tune the corrected software or the new version of the software made available, and, if necessary, modify the hardware and operating environment used.
- 11.3 The fixing of errors shall take place at a location and in a manner determined by Oddity. Oddity is entitled to install temporary solutions, program bypasses or problem-avoiding limitations in the software. Oddity is never obliged to recover data that has been corrupted or lost. If Oddity performs maintenance work online, the Customer shall promptly ensure that proper infrastructure and network facilities are in place.
- 11.4 The Customer shall extend the cooperation required by Oddity in the context of maintenance, including temporarily ceasing use of the software and making a backup of all data.
- 11.5 If the maintenance work relates to software that was not supplied to the Customer by Oddity, the Customer, if Oddity believes this is necessary or desirable for the maintenance work, shall make the source code and the technical (development) documentation of the software, including data models, designs, change logs and the like, available. The Customer guarantees that it is entitled to make the aforementioned items available. The Customer grants Oddity the right to use and change the software, including the source code and technical (development) documentation, in the context of performing the agreed maintenance work.
- 11.6 The maintenance work performed by Oddity does not affect the Customer's own responsibility for managing the software, including checking the settings and the way in which the results arising from operating the software are used. The Customer shall itself install, organise, parameterise and tune the software and support software required and, if necessary, modify the hardware, other software and support software and operating environment used in this regard, and effect the interoperability that it desires.

## **Clause 12 New versions of software**

- 12.1 Maintenance shall include making new versions of the software available only if and insofar as this has been agreed in writing. If agreed, such new versions of the software shall be made available at Oddity's discretion.

- 12.2 Three months after a new version has been made available, Oddity shall no longer be obliged to fix errors in the previous version and to provide support and/or perform maintenance work with respect to a previous version.
- 12.3 Oddity may require that the Customer enter into a further written contract with Oddity for a version with new functionality and that a further payment be made for this version. Oddity may incorporate functionality from a previous version of the software in unaltered form, but does not guarantee that each new version includes the same functionality as the previous version. Oddity is not obliged to maintain, modify or add certain features or functionalities of the software specifically for the Customer.
- 12.4 Oddity may require that the Customer modify its system (hardware, software and the like) if doing so is necessary for the proper functioning of a new version of the software.

### **Clause 13 Support services**

- 13.1 If the services provided by Oddity under the contract include the provision of support to users and/or administrators of the software, Oddity shall provide, by telephone or email, advice on the use and functioning of the software specified in the contract. Oddity may set conditions with respect to the qualifications and the number of persons eligible for support. Oddity shall handle properly substantiated requests for support within a reasonable term in accordance with its usual procedures. Oddity does not guarantee the accuracy, completeness or timeliness of replies or the support offered. Support services shall be performed on working days during Oddity's usual business hours.
- 13.2 If the services provided by Oddity under the contract include the provision of standby services, Oddity shall ensure that one or more staff members are available on the days and during the times specified in the contract. The Customer shall in this case be entitled in the event of urgency to call in the support of staff members on standby if there is a serious malfunction in the operation of the software. Oddity does not guarantee that all malfunctions will be repaired speedily.
- 13.3 The maintenance and other agreed services shall be performed as from the date on which the contract is concluded, unless the parties have agreed otherwise in writing.

### **Clause 14 Payment Software maintenance and Support**

- 14.1 In the absence of an expressly agreed payment schedule, all amounts that relate to the maintenance of the software and the other services as referred to in clauses 11, 12 and 13 and laid down in the contract shall be payable each calendar year in advance.
- 14.2 Amounts relating to the maintenance of the software and the other services covered by a contract shall be payable from the moment of commencement of the

contract. The payment for maintenance and other services shall be due regardless of whether or not the Customer is using the software or exercising the option of maintenance or support.

#### **Clause 15. Warranty provisions**

- 15.1 Oddity shall perform its services with care to the best of its ability, if applicable in accordance with the agreements and procedures agreed in writing with the Customer. All services by Oddity shall be performed on the basis of an obligation to use best endeavours unless and insofar as Oddity has expressly promised a result in the written contract and the result concerned has also been defined with sufficient determinability in the contract.
- 15.2 Oddity shall strive to the best of its ability to fix errors within a reasonable term if these errors are reported in writing in a detailed manner to Oddity within a period of three months following delivery or, if an acceptance test was agreed, within three months following acceptance.
- 15.3 Oddity does not guarantee that the software is suitable for actual use and/or the intended use.
- 15.4 Oddity does not guarantee that the software will operate without interruption and/or that all errors will always be fixed. Oddity shall make efforts to fix the errors in the software referred to in this Clause within a reasonable term if and insofar as the matter concerns software developed by Oddity itself and the Customer has provided a detailed, written description of the defects concerned to Oddity. Where there are grounds for doing so, Oddity may postpone the fixing of defects until a new version of the software is put into operation. Fixing work shall be carried out free of charge unless the software was developed on the instructions of the Customer other than for a fixed price, in which case Oddity shall charge for the costs of fixing in accordance with its usual rates. Oddity may charge for the costs of fixing in accordance with its usual rates if such work is required as a result of user errors or improper use on the part of the Customer, or as a result of causes that cannot be attributed to Oddity. The best efforts obligation to fix errors shall cease to apply if the Customer makes changes in the software or has such changes made without Oddity's written permission. The fixing of errors shall take place at a location and in a manner determined by Oddity. Oddity is entitled to install temporary solutions, program bypasses or problem-avoiding limitations in the software.
- 15.5 Oddity does not guarantee that defects in software that it has not developed itself shall be fixed. Oddity is entitled to install temporary solutions, program bypasses or problem-avoiding limitations in the software. If the software was developed on the instructions of the Customer, Oddity may charge for the costs of fixing to the Customer in accordance with Oddity's usual rates. Based on the information provided by Oddity concerning measures to prevent and limit the effects of malfunctions, corruption or loss of data or

other incidents, the Customer shall identify and list the risks to its organisation and take additional measures if necessary. Oddity declares that it is prepared to provide assistance, at the Customer's request, to the extent reasonable and according to the financial and other conditions set by Oddity, with respect to further measures to be taken by the Customer.

- 15.6 Oddity undertakes to make every effort to repair any faults in the hardware delivered by Oddity to the Customer. If the hardware fault cannot be repaired, Oddity will replace the faulty hardware. Oddity is at all times entitled to opt to refund the sale price, instead of repairing or replacing the faulty hardware, the Customer must notify Oddity of the fault as soon as possible by contacting Oddity Support, using the contact details referred to on Oddity Website. Any claims without contacting Oddity Support first will be rejected.
- 15.7 Oddity will only repair, replace or refund the sale price of faulty hardware, if the fault has occurred as a result of normal use of the hardware. Oddity is in any case not obliged to repair, replace or refund the sale price of faulty hardware if: a. The fault has been caused by actions of the Customer such as, but not limited to, incorrect, careless or incompetent use, damage caused intentionally or mounting or installing third-party hardware or software onto the hardware; b. the fault is the result of circumstances that are partly or fully beyond the control of the Customer and Oddity, such as damage by fire and water; c. the fault is the result of other, external factors, not referred to in these conditions; d. the faulty hardware has already been adjusted and/or repaired by a party other than Oddity and its employees; or e. if the Customer has failed to fulfil one or more of its obligations under this agreement.
- 15.8 If the Customer is successful in invoking an obligation of FultFact to repair, replace or refund the sale price of the faulty hardware, the costs of repair or replacement will be payable by Oddity, with the exception of the dispatch costs. If the Customer is not successful in invoking this obligation, Oddity will never proceed to repair or replace the faulty hardware without the approval of the Customer. Any original parts replaced as part of a repair or the faulty hardware replaced as a whole will not be returned to the Customer. Ownership thereof will be transferred to Oddity.

## **Clause 19. Intellectual property rights**

- 19.1 All intellectual property rights to the software, websites, data files, hardware and training, testing and examination materials, as well as other materials like analyses, designs, documentation, reports and offers, including preparatory materials in this regard, developed or made available to the Customer under the contract are held exclusively by Oddity, its licensors (i.e.) Oddity Software B.V. or its suppliers. The Customer shall have the rights of use expressly granted under these general terms and conditions, the contract concluded in writing between the parties and the law. A right accorded to the Customer is non-exclusive and may not be transferred, pledged or sublicensed.

- 19.2 The Customer shall not multiply or publish the software or other materials.
- 19.3 The Customer may not remove or change any indication concerning the confidential nature of or concerning the copyrights, brands, trade names or any other intellectual property right pertaining to the software, websites, data files, hardware or materials, or have any such indication removed or changed.
- 19.4 Even if not expressly provided for in the contract, Oddity may always take technical measures to protect hardware, data files, websites, software made available, software to which the Customer is granted direct or indirect access, and the like in connection with an agreed limitation in terms of the content or duration of the right of use of these items. The Customer may not remove or bypass such technical measures or have such technical measures removed or bypassed.
- 19.5 Any use, copying or publication of the materials outside the purport of the Agreement or granted rights of use shall be regarded as an infringement of copyrights. The Customer shall pay Oddity an immediately due and payable penalty of EUR 10,000 (ten thousand Euros) per violation - which penalty is not open to judicial mitigation - without prejudice to the right of Oddity to be compensated for the damage or loss it suffers as a result of the infringement or to take other legal measures in order to end the infringement.
- 19.6 Oddity indemnifies the Customer against any claim of a third party based on the allegation that software, websites, data files, hardware or other materials developed by Oddity itself infringe an intellectual property right of that third party, subject to the condition that the Customer immediately informs Oddity in writing about the existence and content of the claim and leaves the settlement of the claim, including any arrangements made in this regard, entirely to Oddity. The Customer shall provide the powers of attorney and information required to Oddity and assist Oddity to defend itself against such claims. This obligation to indemnify shall not apply if the alleged infringement concerns (i) materials made available to Oddity by the Customer for use, modification, processing or maintenance or (ii) changes made or commissioned by the Customer in the software, website, data files, hardware or other materials without Oddity's written permission. If it is irrevocably established in court that software, websites, data files, hardware or other materials developed by Oddity itself is or are infringing any intellectual property right held by a third party, or if, in the opinion of Oddity, there is a good chance that such an infringement is occurring, Oddity shall if possible ensure that the Customer can continue to use, or use functional equivalents of, the software, websites, data files, hardware or materials supplied. Any other or further obligation to indemnify on the part of Oddity due to infringement of a third party's intellectual property right is excluded.
- 19.7 The Customer guarantees that making hardware, software, material intended for websites, data files and/or other materials and/or designs available to Oddity for the purpose of use, maintenance, processing, installation or integration

does not infringe any rights of third parties. The Customer indemnifies Oddity against any claim of a third party based on the allegation that such making available, use, maintenance, processing, installation or integration infringes a right of that third party.

- 19.8 Oddity is never obliged to perform data conversion unless doing so has been expressly agreed in writing with the Customer.

## **Clause 20. Limitation of Liability**

- 20.1 Oddity's total liability due to an attributable failure in the performance of the contract or on any legal basis whatsoever, expressly including each and every failure to fulfil a warranty obligation agreed with the Customer, shall be limited to compensation for direct loss up to a maximum of the price stipulated for the contract concerned (excluding VAT). If the contract is mainly a continuing performance contract with a term of more than one year, the price stipulated for the contract shall be set at the total amount of the payments (excluding VAT) stipulated for one year. However, Oddity's total liability for direct loss, on any legal basis whatsoever, shall never amount to more than EUR 10.000 (ten thousand euros).
- 20.2 Oddity's total liability for direct loss due to death or bodily injury shall never amount to more than EUR 1.250.000 (one million two hundred fifty thousand euros). Indirect loss is explicitly excluded.
- 20.3 Oddity's liability for indirect loss, consequential loss, loss of profits, lost savings, reduced goodwill, loss due to business interruption, loss as a result of claims of the Customer's Customers, loss arising from the use of items, materials or software of third parties prescribed by the Customer to Oddity and loss arising from the engagement of suppliers prescribed by the Customer to Oddity, is excluded. Oddity's liability for corruption, destruction or loss of data or documents is likewise excluded. Oddity shall not be liable for loss or costs that are the result of the use or misuse of access or identification codes or certificates unless the misuse is the direct result of deliberate intent or recklessness on the part of Oddity's management.
- 20.4 The exclusions and limitations of Oddity's liability described paragraphs 20.1 up to and including 20.3 are entirely without prejudice to the other exclusions and limitations of Oddity's liability described in these general terms and conditions.
- 20.5 The exclusions and limitations referred to in paragraphs 20.1 up to and including 20.4 shall cease to apply if and insofar as the loss is the result of deliberate intent or recklessness on the part of Oddity's management.
- 20.6 Unless performance by Oddity is permanently impossible, Oddity shall only be liable due to an attributable failure in the performance of a contract if the Customer declares Oddity to be in default in writing without delay and grants Oddity a reasonable term to remedy the breach, and Oddity culpably fails to

fulfil its obligations also after this term has passed. The notice of default must describe the breach as comprehensively and in as much detail as possible in order to give Oddity the opportunity to respond adequately. For there to be any right to compensation, the Customer must always report the loss to Oddity in writing as soon as possible after the loss has occurred.

- 20.7 Each claim for compensation against Oddity shall be barred by the mere expiry of a period of 24 months following the inception of the claim unless the Customer has instituted a legal action for damages prior to the expiry of this period.
- 20.8 The Customer indemnifies Oddity against any and all claims of third parties due to product liability as a result of a defect in a product or system that the Customer supplied to a third party and that consisted in part of hardware, software or other materials supplied by Oddity, unless and insofar the Customer is able to prove that the loss was caused by the hardware, software or other materials referred to.
- 20.9 The provisions of this clause and all other limitations and exclusions of liability referred to in these general terms and conditions shall also apply for the benefit of all natural persons and legal entities that Oddity engages in the performance of the contract.
- 20.10 Oddity shall never be liable for damage or loss resulting from force majeure.

#### **Clause 21. Force Majeure**

- 21.1 In the event of force majeure, which in any case includes disruptions to or breakdown of the Internet, the telecommunications infrastructure, power failures, domestic uprising, mobilisation, war, traffic jams, strikes, lockouts, business interruptions, stagnations in supply, fire, floods, import and export obstructions and in the event that suppliers of Oddity make it unable to deliver - regardless of the reason - as a result of which Oddity cannot reasonably be expected to fulfil the Agreement, performance of the Agreement shall be suspended or the Agreement shall be terminated when the situation of force majeure has exceeded a ninety-day period, without being obliged to pay any compensation. In such an event, that which has already been performed under the contract, Oddity shall be paid for on a proportional basis without the parties owing each other anything else. In addition, force majeure on the part of Oddity means, among other things: (i) force majeure on the part of suppliers of Oddity, (ii) the failure to properly fulfil obligations on the part of suppliers that were prescribed to Oddity by the Customer, (iii) defects in items, hardware, software or materials of third parties the use of which was prescribed to Oddity by the Customer, (iv) government measures, (v) power failures, (vi) Internet, data network or telecommunication facilities failures, (vii) war and (viii) general transport problems.

## **Clause 22. Personnel**

22.1 The Customer shall render every assistance to staff of Oddity who, for the delivery of products and/or services, carry out work at the offices of the Customer, so that they can carry out their work correctly. 2. As long as the relation between the Customer and Oddity continues, and for one year thereafter, the Customer shall not be allowed to take on staff of Oddity and/or to have them work for the Customer in any other way, directly or indirectly, without the prior written approval of Oddity. Within this context, staff members of Oddity are understood to mean persons employed by Oddity or one of the companies affiliated to Oddity or who were employed by Oddity or one of the companies affiliated to Oddity less than 6 (six) months ago.

## **Clause 23. Secrecy and Security**

23.1 The Customer and Oddity must ensure that all information received from the other party that the receiving party knows or should reasonably know is confidential is kept secret. This duty of confidentiality shall not apply to Oddity if and insofar as Oddity is required to provide the information concerned to a third party in accordance with a court decision or a statutory requirement, or if and insofar as doing so is necessary for the proper performance of the contract by Oddity. The party that receives the confidential information may only use it for the purpose for which it was provided. Information shall in any case be deemed to be confidential if it has been qualified as such by one of the parties.

23.2 The Customer acknowledges that software originating from Oddity is always confidential in nature and that this software contains trade secrets of Oddity and its Odditys or the producer of the software.

23.3 Oddity shall not take cognizance of data stored and/or distributed by the Customer via Oddity systems, unless this is necessary for the proper performance of the Agreement, or unless Oddity is obliged to do so by virtue of a statutory provision or court order. In that case, Oddity shall endeavour to limit taking cognizance of the data to the greatest possible extent, insofar this lies within its powers. The Customer indemnifies Oddity against claims of persons whose personal data is recorded or processed in the context of a register of personal data that is maintained by the Customer or for which the Customer is otherwise responsible by law, unless the Customer proves that the facts on which a claim is based are attributable to Oddity.

23.4 The Customer is fully responsible for the data that it processes in the context of using a services of Oddity. The Customer guarantees vis-à-vis Oddity that the content, use and/or processing of the data are not unlawful and do not infringe any right of a third party. The Customer indemnifies Oddity against any claim of a third party instituted for whatever reason in connection with this data or the performance of the contract.



- 23.5 If Oddity is obliged to provide for a form of information security under the contract, this security shall meet the specifications agreed in writing between the parties regarding security. Oddity does not guarantee that the information security provided is effective under all circumstances. If the contract does not include an explicitly defined security method, the security provided shall meet a standard that is not unreasonable in terms of the state of the art, the sensitivity of the information and the costs associated with the security measures taken.
- 23.6 The access or identification codes and certificates provided by or because of Oddity to the Customer are confidential and must be treated as such by the Customer, and may only be made known to authorised personnel in the Customer's own organisation. Oddity is entitled to change the access or identification codes and certificates.
- 23.7 The Customer must adequately secure its systems and infrastructure and have active antivirus software protection at all times.

#### **Clause 24. Term and Termination**

- 24.1 If and insofar as the contract concluded between the parties is a continuing performance contract, the contract shall be entered into for the term agreed between the parties. A term of one year shall apply if no term has been agreed.
- 24.2 The term of the contract shall be tacitly extended, each time by the period of time originally agreed, unless the Customer or Oddity terminates the contract in writing with due observance of a notice period of two months prior to the end of the current term.
- 24.3. If the Services pertains to the development of software or other works, the Agreement is deemed to have been concluded for the term as indicated in the offer or until the works have been developed and accepted. In this situation, the Agreement cannot be terminated prematurely, unless agreed otherwise.
- 23.4 In the event of cancellation, termination or dissolution for whatever reason, Oddity is entitled to delete all stored data or to render access to it impossible and to cancel all accounts of the Customer, immediately after the Agreement ends. In that case, Oddity shall not be obliged to give the Customer a copy of this data.
- 23.5 In the event that the Customer fails to fulfil any of its obligations under the Agreement, Oddity is entitled to suspend performance of all agreements concluded with the Customer in question, without any notice of default or legal intervention being required and without prejudice to the right of Oddity to compensation for damage, loss of profits and interest, unless the failure to perform concerned is of minor importance.
- 23.6 Each party shall only be authorised to rescind the contract due to an attributable failure in the performance of the contract if the other party, in

all cases after a written notice of default that is as detailed as possible and that grants a reasonable term to remedy the breach has been issued, is culpably failing to fulfil essential obligations under the contract. The Customer's payment obligations and all obligations of the Customer or a third party engaged by the Customer to cooperate and/or provide information apply in all cases as essential obligations under the contract.

- 23.7 If, at the time of rescission, the Customer has already received goods or services in the performance of the contract, these goods or services and the associated payment obligations shall not be undone unless the Customer proves that Oddity is in default with respect to the essential part of such goods or services. With due regard to the stipulation of the preceding sentence, amounts invoiced by Oddity prior to rescission in connection with what is already properly performed or delivered in the performance of the contract shall remain payable in full and shall become immediately due and payable at the time of termination.
- 23.8 A contract which, due to its nature and content, does not end in completion and which has been entered into for an indefinite period of time may be terminated by either of the parties in writing following consultation between the parties. Reasons for the termination must be stated.
- 23.9 If a notice period has not been agreed between the parties, a reasonable period must be observed when notice of termination is given. Oddity is never obliged to pay any compensation due to termination. The Customer may not terminate a contract of engagement that has been entered into for a definite period of time.
- 23.10 Either of the parties may terminate the contract in writing, in whole or in part, without notice of default being required and with immediate effect, if the other party is granted a moratorium, whether or not provisional, a petition for bankruptcy is filed for the other party or the company of the other party is liquidated or dissolved other than for restructuring or a merger of companies. Oddity may also terminate the contract, in whole or in part, without notice of default being required and with immediate effect, if a direct or indirect change occurs in the decisive control of the Customer's company. Oddity is never obliged to repay any amount in money already received or pay any amount in compensation due to termination as referred to in this paragraph. If the Customer goes irrevocably bankrupt, its right to use the software, websites and the like made available to it shall end, as shall its right to access and/or use Oddity's services, without termination by Oddity being required.

## **Clause 25. Changes to Terms & Conditions**

- 25.1 Oddity reserves the right to make changes in or additions to these terms and conditions. Changes also apply to agreements entered into earlier, subject to a period of 30 days from the date on which notice of the change is given on the

website of Oddity or via electronic messaging. Changes of minor importance can be made at any time. Should the Customer not wish to accept a change in these terms and conditions, it may, up until the date on which the new terms and conditions take effect, terminate the agreement as of this date or on the date of receipt of the notice of termination, if after the effective date of the change.

#### **Clause 26. Final stipulations**

- 26.1 This Agreement is governed by the laws of the Netherlands. Insofar as not dictated otherwise by mandatory law, any disputes as a result of this agreement shall be submitted to the competent Dutch court in Utrecht.
- 26.2 Any provision in this agreement appearing to be void does not affect the validity of any other parts of the agreement. In that case, the parties shall determine (a) new provision(s) which resemble(s) the intention of the original Agreement and General Terms and Conditions as closely as legally possible.
- 26.3 The Customer may not sell, transfer or pledge its rights and obligations under a contract to a third party. Oddity is entitled to sell, transfer or pledge its claims to payment of amounts owed to a third party. 4. Information and notifications on the website of Oddity are subject to programming and typing errors. In the event of inconsistencies between the website and the Agreement, the Agreement prevails.
- 26.5 In these terms and conditions, the terms 'in writing' and 'written' are also taken to mean e-mail, provided the identity and integrity of the e-mail have been sufficiently established.
- 26.6 The version of any communication received or stored by Oddity is regarded as authentic, subject to proof to the contrary to be produced by the Customer.
- 26.7 The Customer grants Oddity permission to use its name and logo within the framework of promotional activities of Oddity, unless explicitly agreed otherwise in the Agreement, or the Customer is able to advance a major interest pleading against this use.
- 26.8 The parties shall continuously and immediately notify each other of any changes in name, correspondence address, e-mail address, telephone number and, when asked, bank account number.