

## **GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY (1 August 2005)**

of **Desu Systems B.V.**, a private limited liability company, having its registered office and maintaining business premises in Rotterdam, the Netherlands, hereafter referred to as '**DESU**'

### **Article 1 Definitions**

- 1.1. In these General Terms and Conditions, the terms below will be defined as follows, unless expressly stated otherwise.
- 1.2. DESU: a legal entity that applies these General Terms and Conditions, and one or more legal entities, irrespective of whether they are established in the Netherlands, that are affiliated and/or connected with DESU.  
Buyer / Client: every natural person or legal entity that has a contractual relationship with DESU based on an agreement concluded with DESU, or that wishes to enter into an agreement with DESU. The terms Buyer/Client will particularly refer to any party that purchases goods from DESU and takes delivery of same, as well as to any party on whose instructions and for whose account work is performed and services are provided.
- 1.3. The Work: all forms of services, relating and/or pertaining to the goods sold or to be sold and to be delivered by DESU and all transactions relating to the contract of sale/work/services, all this in the broadest sense.  
Agreement: the agreement between DESU and the Buyer/Client.

### **Article 2 General**

- 2.1. The provisions of these General Terms and Conditions will apply fully to all offers made by DESU and all Agreements between DESU and a Buyer/Client to which DESU has declared these Terms and Conditions applicable, insofar as the parties have not explicitly deviated from these Terms and Conditions in writing. These General Terms and Conditions will in any case apply to all Agreements with DESU regarding the sale, delivery, payment, placement/installation and repair of the goods sold or to be sold by DESU, and all related Work and services.
- 2.2. The current Terms and Conditions will also apply to all Agreements with DESU for the performance of which DESU engages any third parties or is required to engage third parties.
- 2.3. These General Terms and Conditions will be declared applicable to all offers issued, and will apply to both the offer and its acceptance, as well as to the Agreement/Agreements that is/are concluded as a result.
- 2.4. The provisions of these General Terms and Conditions may be deviated from only if and insofar as this has been expressly agreed in writing.
- 2.5. The applicability of any general terms and conditions of the Buyer/Client is hereby expressly rejected.
- 2.6. In derogation from the above, if the acceptance notice contains any reservations and/or amendments in respect of the offer, the Agreement will only be concluded if DESU notifies the Buyer/Client that it agrees to those deviations from the offer.
- 2.7. Any derogations from these General Terms and Conditions will apply only to those provisions for which they have been accepted. The other provisions of these General Terms and Conditions of Sale will expressly remain fully applicable.

### **Article 3 Offers and quotations**

- 3.1. Any offers issued by or on behalf of DESU will not be binding on DESU in any way, unless the offer expressly and unambiguously states the contrary, in writing.
- 3.2. Any quotations issued by DESU will be without obligation; they will be valid for thirty days, unless the contrary is indicated. DESU will be bound by quotations only if their acceptance has been confirmed by the Buyer/Client in writing within thirty days.

- 3.3. The Agreement between DESU and the Buyer/Client will be concluded as soon as DESU has received a written notice of acceptance of the offer or, in the event of a verbal Agreement, once the supply of the goods and/or the performance of the Work/services has been commenced by DESU and a written notice has been issued to the Buyer/Client simultaneously.
- 3.4. Delivery dates stated in quotations issued by DESU are indicative only and will not entitle the Buyer/Client to dissolution or damages if same are exceeded, unless provisions to the contrary have been explicitly agreed.
- 3.5. The prices stated in the said offers and quotations will be exclusive of Dutch VAT and other government levies, as well as exclusive of dispatch and possible transport and packaging costs, unless expressly stated otherwise.
- 3.6. If the notice of acceptance deviates – even on minor points – from the offer contained in the quotation, DESU will not be bound to same. In that event, the Agreement will not be concluded in accordance with that deviating acceptance, unless DESU indicates the contrary.
- 3.7. A composite quotation will not oblige DESU to supply part of the goods included in the offer or quotation for a corresponding part of the stated price.
- 3.8. Offers or quotations will not apply automatically to follow-up orders.
- 3.9. In the event of the cancellation of a quotation signed by or on behalf of the Buyer/Client, DESU will charge it 25% of the net price quoted, exclusive of Dutch VAT.

#### **Article 4 Performance of the Agreement**

- 4.1. DESU will perform the Agreement to the best of its knowledge and ability and in accordance with the requirements of good workmanship. Such performance will be effected on the basis of state-of-the-art technology at that time.
- 4.2. If and insofar as required for the satisfactory performance of the Agreement, at DESU's exclusive discretion, DESU will be entitled to have third parties perform certain Work.
- 4.3. The Buyer/Client shall ensure that all data and documents which DESU indicates are necessary or which the Buyer/Client should reasonably understand are necessary for the Agreement's performance are made available to DESU on time. If DESU is not provided with the data and documents necessary for the performance of the Agreement on time, DESU will be entitled to suspend the Agreement's performance and/or charge the Buyer/Client the additional costs arising from the delay in accordance with its usual rates.
- 4.4. DESU will not be liable for damage, of any nature, resulting from the fact that DESU has worked on the basis of incorrect and/or incomplete data provided by the Buyer/Client, unless DESU should have been aware of this incorrectness or incompleteness.
- 4.5. If it has been agreed that the Agreement will be performed in phases, DESU may postpone its performance of parts belonging to a subsequent phase until the Buyer/Client has approved the results of the previous phase in writing.
- 4.6. If DESU or any third parties engaged by DESU in the context of the assignment perform any Work on site at the Buyer/Client or at a location of the Buyer's/Client's choice, the Buyer/Client will provide any facilities which the relevant employees reasonably require.
- 4.7. The Buyer/Client will indemnify DESU against any claims instituted by third parties, including employees of DESU, who have incurred damage in connection with the performance of one or more Agreements as the result of any act and/or omission on the part of the Buyer/Client or of unsafe situations on/in/at its immovable property.
- 4.8. If the assignment is granted by more than one natural person or legal entity, each person/entity will be jointly and severally liable for any obligations ensuing for them from the Agreement.

#### **Article 5 Delivery**

- 5.1. Unless the contrary has been agreed in writing, delivery will be effect ex DESU's warehouse. Deliveries will be effected carriage paid only if and insofar as this has been expressly stated in writing by the Seller/Client on the invoice or a similar document.
- 5.2. If delivery is effected on the basis of the 'Incoterms', the Incoterms that apply at the time of the Agreement's conclusion will govern the Agreement.
- 5.3. The Buyer/Client will be obliged to take delivery of the goods at the time that DESU delivers or has others deliver same to it, or at the time at which the goods are made available to it in accordance with the Agreement.
- 5.4. If the Buyer/Client refuses to take delivery of the goods or fails to provide information or instructions necessary for the delivery, DESU will be entitled to store the goods at the Buyer's/Client's expense and risk. After a period of four weeks following the expiry of the agreed delivery term, DESU will be entitled to dissolve the Agreement by means of an extra-judicial declaration and DESU will be free to sell the goods in question. The corresponding costs and any lower proceeds will be for the Buyer's/Client's account. The storage costs amount to 8% per month, calculated on the total invoice value.
- 5.5. If the goods are delivered, DESU will be entitled to charge any delivery costs. In that event, such costs will be invoiced separately.
- 5.6. If the Buyer/Client takes delivery of the goods from a carrier engaged by and/or operating on the instructions of DESU, this fact will be considered proof that the packaging material is in good condition, unless the Buyer/Client writes the contrary on the consignment note or the receipt.
- 5.7. If DESU requires data from the Buyer/Client in the context of the Agreement's performance, the delivery term will commence after the Buyer/Client has made those data available to DESU.
- 5.8. If DESU has stated a delivery term, that term will be indicative only. A stated delivery date may therefore never be considered a firm deadline. If a term is exceeded, the Buyer/Client should give DESU written notice of default, by registered letter.
- 5.9. DESU will be entitled to deliver the goods in parts, unless provisions to the contrary have been laid down in the Agreement or such partial deliveries would not have any independent value. DESU will be entitled to invoice such deliveries separately.

#### **Article 6 Samples, models, illustrations**

- 6.1. If the Buyer/Client has been shown or provided with a sample or model, same should be presumed to have been provided as an indication only, without the good having to correspond to same, unless it has been expressly agreed that the good will be identical.
- 6.2. In the event of Agreements relating to immovable property, any stated surface areas or other measurements and specifications will also be presumed to be indicative only, without the property having to be fully in accordance with same.
- 6.3. Any illustrations, drawings, data pertaining to weights, measurements, colours, and data pertaining to the intended use of the equipment contained in price lists, on DESU's website, and in folders, brochures and advertisements will be compiled with the greatest possible care, but will be approximate only and will not form any grounds for damages and/or dissolution.

#### **Article 7 Inspections, complaints**

- 7.1. The Buyer/Client will be obliged to inspect the delivered goods, or have others do so, at the time of delivery/transfer, though in any event within three working days of delivery/transfer. In doing so, the Client/Buyer should investigate whether the quality and quantity of the delivered goods correspond with the Agreements made, or in any case meet the requirements expected in that respect in standard business practice.
- 7.2. The provisions of Article 5.6 will apply fully.
- 7.3. Any visible defects or shortfalls should be reported to DESU in writing within three working days of

delivery. Invisible defects or shortfalls should be reported in writing within three weeks of their discovery, though no later than within twelve months after delivery.

- 7.4. Any complaints should be lodged by the Buyer/Client with DESU in writing, by registered letter, stating the order data and the invoice and consignment note numbers.
- 7.5. Even if a timely complaint has been lodged in accordance with the preceding paragraph, the Buyer/Client will remain obliged to take delivery of and pay for the purchased goods. If the Buyer/Client wishes to return defective goods, it may do so only after obtaining DESU's written permission, in the manner indicated by DESU.
- 7.6. In the event of a well-founded and properly lodged complaint, DESU will be obliged, at its discretion, taking account of the interests of the Buyer/Client and the nature of the complaint:
  - a. to supply any shortfalls; or
  - b. to grant a discount; or
  - c. to repair the goods delivered; or
  - d. to replace the goods delivered; or
  - e. to pay back the purchase price in return for the goods delivered.
- 7.7. DESU will make the choice referred to in the previous paragraph within a reasonable period of time following the complaint by the Buyer/Client and will subsequently perform its obligations within a reasonable period of time, in default of which the Buyer/Client will be authorised to choose from among DESU's obligations listed above.

#### **Article 8 Payments, price and costs**

- 8.1. If DESU and the Buyer/Client have agreed on a fixed sales price, DESU will nevertheless be entitled to increase that price.
- 8.2. DESU may pass on price rises *inter alia* if, between the time of the offer and the delivery, significant price changes have occurred in respect of, for instance, exchange rates, wages, raw materials, semi-manufactured goods or packaging materials.
- 8.3. If the increase is imposed within three months of the Agreement's conclusion, the Buyer/Client will be entitled to dissolve the Agreement, unless DESU is prepared to implement the Agreement subject to the original terms and conditions as yet.
- 8.4. The prices applied by DESU will be exclusive of Dutch VAT and any other taxes, levies and charges, as well as any costs to be incurred in the context of the Agreement, including shipment and handling charges, unless stated otherwise.

#### **Article 9 Amendments to the Agreement**

- 9.1. If, during the performance of the Agreement, it proves necessary to amend or supplement the Work to be carried out to ensure proper performance, the parties will adjust the Agreement accordingly, in mutual consultation and in good time.
- 9.2. If the parties agree that the Agreement will be amended and/or supplemented, this can and may affect the time at which the Agreement's performance is completed. DESU will inform the Buyer/Client thereof as soon as possible.
- 9.3. If an amendment and/or the supplement to the Agreement has financial and/or qualitative consequences, DESU will inform the Buyer/Client thereof in advance.
- 9.4. If a fixed rate has been agreed, DESU will indicate in advance to what extent the amendment or supplement to the Agreement will result in the fixed rate being exceeded.
- 9.5. In derogation from the provisions above, DESU will not charge any additional costs if the amendment or supplement has resulted from circumstances that may be attributed to it.
- 9.6. Under no circumstance will any amendments/adjustments/supplements to the Agreement, whatever their cause, entitle the Buyer/Client to damages.

## **Article 10      Payment**

- 10.1. The Buyer/Client should effect payment, without applying any deduction, discount or set-off, within the agreed term, though in any case no later than 30 days after the invoice date. Payment should be made in the manner to be indicated by DESU in the currency stated in the invoice.
- 10.2. If the Buyer/Client fails to pay within the 30-day period, the Buyer/Client will be in default by operation of law. The Buyer/Client will then owe interest at a 1% rate per month, unless the statutory interest is higher, in which case the statutory interest will apply. The interest on the exigible amount will be calculated from the time at which the Buyer/Client is in default to the time of full payment.
- 10.3. If the Buyer/Client is liquidated or declared bankrupt, if attachment is levied on it or it is granted a suspension of payments, DESU's claims vis-à-vis the Buyer/Client will fall immediately due and payable.
- 10.4. If the Buyer's/Client's financial position or payment behaviour give cause for doing so, DESU will be entitled to require that the Buyer/Client provide security or supplementary security forthwith, in a form to be determined by DESU. If the Buyer/Client fails to provide the required security, DESU will be entitled, without prejudice to its other rights, to immediately suspend its further performance of the Agreement and all amounts owing by the Buyer/Client to DESU, on whatever basis, will become immediately due and payable.
- 10.5. DESU will be entitled to first use payments made by the Buyer/Client to cover the costs, then to cover any interest due and finally to cover the principal sum and the accrued interest. DESU may refuse an offer of payment if the Buyer/Client specifies a different order for the payment allocation, without being in default as a result. DESU may refuse to grant complete discharge in respect of the principal sum if the payment does not also include the settlement of any interest due, the accrued interest and the costs.
- 10.6. DESU will be entitled to charge the Buyer/Client a 2% surcharge on late payments. This surcharge will not be payable if payment is made within seven days of the invoice date.

## **Article 11      Retention of title**

- 11.1. All goods supplied by DESU, including any designs, sketches, drawings, films, software, electronic and other files, etc., will remain DESU's property until the Buyer/Client has performed all its obligations under all Agreements concluded with DESU.
- 11.2. The Buyer/Client may not alienate or pledge, or encumber in any other way, the goods covered by the retention of title.
- 11.3. If third parties levy attachment on the goods supplied subject to the retention of title or wish to create or enforce rights in respect of same, the Buyer/Client will be obliged to notify DESU thereof as soon as may reasonably be expected, in writing, by registered letter.
- 11.4. The Buyer/Client undertakes to insure the goods supplied subject to the retention of title and keep them insured against fire, explosion and water damage and against theft, and to allow DESU to inspect the relevant insurance policy at first request.
- 11.5. Any goods supplied by DESU that are subject to retention of title by virtue of the provisions of paragraph 1 of this Article may be resold only in the context of normal business operations and may never be used as a means of payment.
- 11.6. In case DESU should wish to exercise its proprietary rights as described in this Article, the Buyer/Client hereby grants DESU and any third parties to be designated by it, in advance, its unconditional and irrevocable permission to enter all those places where DESU's property is located and to recover that property.

## **Article 12      Warranty**

- 12.1. DESU warrants that the goods to be supplied will meet the usual requirements and standards which may be imposed in respect of same and are without defects.

- 12.2. The warranty referred to in paragraph 1 will also apply if the goods to be supplied are intended to be used abroad and the Buyer/Client has expressly notified DESU of this intended use in writing at the time of the Agreement's conclusion.
- 12.3. If the goods to be delivered do not meet the provisions of this warranty, DESU shall – at DESU's discretion – replace the good or have it repaired, within a reasonable period of time following its receipt of the goods or, if it is not reasonably possible to return the goods, following the written notification of the defect in question from the Buyer/Client. If the goods are to be replaced, the Buyer/Client undertakes in advance to return the replaced good to DESU and grant DESU title thereto.
- 12.4. The warranty referred to above will not apply if the defect has arisen as the result of inexpert or improper use, or if the Buyer/Client or third parties have made or have attempted to make alterations to the good without DESU's written permission, or have used the good for purposes for which it was not intended.
- 12.5. If the warranty issued by DESU relates to a good produced by a third party, the warranty will be limited to the warranty issued by the manufacturer in respect of the good.

### **Article 13      Collection costs**

- 13.1. If the Buyer/Client fails to fulfil or remains in default of fulfilling one or more of its obligations, all reasonable costs for obtaining extra-judicial payment will be for the Buyer's/Client's account and risk. If the Buyer/Client remains in default of timely payment of a certain amount, it will forfeit an immediately due and payable penalty of 10% of the outstanding amount. This penalty will be subject to a minimum of EUR 500.
- 13.2. If DESU has incurred higher costs which were reasonably necessary, such costs will also qualify for compensation.
- 13.3. Any judicial and extra-judicial costs reasonably incurred will also be for the Buyer's/Client's account.
- 13.4. The Buyer/Client will owe DESU interest on the collection costs incurred.

### **Article 14      Suspension and dissolution**

- 14.1. DESU may suspend its performance of its obligations or dissolve the Agreement if:
- the Buyer/Client fails to perform one or more of its obligations under the Agreement or fails to perform them in full or properly;
  - following the Agreement's conclusion, DESU learns of circumstances that provide reasonable grounds for fearing that the Buyer/Client will not perform its obligations. If there is good reason to fear that the Buyer/Client will only perform its obligations in part or will not perform such properly, suspension will be permitted only insofar as justified by the relevant failure; and
  - upon the Agreement's conclusion, the Buyer/Client was requested to provide security for the performance of its obligations under that Agreement and such security was not provided or is insufficient. As soon as security has been provided, the right to suspend performance will lapse, unless the performance has been unreasonably delayed as a result.
- 14.2. In addition, DESU may dissolve the Agreement or have it dissolved if circumstances arise of such a nature that performance of the Agreement is impossible or can no longer be required pursuant to standards of fairness and reasonableness, or if any other circumstances arise of such a nature that continued unamended maintenance of the Agreement can no longer reasonably be expected.
- 14.3. If the Agreement is dissolved, DESU's claims vis-à-vis the client will become immediately due and payable. If DESU suspends its performance of its obligations, it will retain its rights pursuant to the law and the Agreement.

14.4. DESU will at all times retain the right to claim damages.

#### **Article 15 Return of goods made available**

- 15.1. If DESU has made items available to the Buyer/Client in the context of the Agreement's performance, the Buyer/Client will be obliged to return those items within 14 days, in their original condition, free of defects and complete. If the Buyer/Client fails to fulfil this obligation, all resulting costs will be for the Buyer's/Client's account.
- 15.2. If the Buyer/Client remains in default, for whatever reason, following a warning issued for that purpose in respect of the obligation referred to in paragraph 1, DESU will be entitled to recover any resulting damage and costs, including the costs of replacement, from the Buyer/Client.

#### **Article 16 Liability**

- 16.1. DESU's overall liability will be limited to the performance of its obligations as described in these General Terms and Conditions. Any further liability, other than that ensuing for DESU from the warranty provisions laid down in these General Terms and Conditions, is hereby excluded.
- 16.2. Any liability on DESU's part for indirect damage, including consequential damage [*gevolgschade*], loss of profits, loss of savings or any damage due to an interruption in the business operations, is hereby excluded.
- 16.3. DESU's liability will be limited to the amount paid out by its professional indemnity or third-party liability insurance for the relevant event, plus the excess which, according to the insurance policy terms and conditions, is not to be borne by the insurers. If and insofar as, for any reason, no payment is made under the said insurance policy/policies, any liability on DESU's part will be limited to the amount of EUR 5,000.
- 16.4. The maximum amount referred to in the preceding paragraph will not apply if and insofar as the damage has resulted from an intentional act or omission or gross negligence on DESU's part.
- 16.5. A right to damages can arise only subject to the condition that the Buyer/Client reports the damage in question to DESU's management in writing as soon as possible after the damage has occurred.
- 16.6. Any damage that may arise due to or as a consequence of the Work outsourced by DESU to one or more third parties will be subject to compensation by DESU only if and insofar as it has been compensated by the relevant third party/parties for that damage and DESU has actually received such compensation, after deduction of the costs incurred by DESU in that respect.
- 16.7. DESU will not accept any liability for damage caused by any employees and/or freelancers seconded by it to the Buyer/Client, except if and insofar as the damage has resulted from an intentional act or omission or gross negligence on the part of the employees and/or freelancers seconded to the Buyer/Client.
- 16.8. The limitation of liability laid down in this provision is also stipulated in favour of any third parties engaged, which third parties will therefore be able to directly invoke this limitation of liability.
- 16.9. DESU will not be liable for any costs, damage or interest that may arise as a direct or indirect result of
- any violation of patents, licences or other rights of third parties as the result of the use of any data provided by or on behalf of the Client;
  - any acts or omissions by the Client, its employees or any other persons engaged by or on behalf of DESU and/or the Client; or
  - any delivery term being exceeded.
- 16.10. The Buyer/Client guarantees that it is authorised to grant the assignment in question, and that it has paid any fees due to third parties in that connection. The Client will be liable for the accuracy of the data provided to DESU and must indemnify DESU against any violations of patents, licences, trademark rights, design rights, copyrights and any other intellectual property rights or other rights vested in third parties. DESU will be authorised to take all necessary measures in that context, for the Client's account.

- 16.11. DESU's liability will always be limited to the amounts to which it is entitled under the business liability insurance taken out by it, including the excess.

#### **Article 17      Passing of risk**

- 17.1. The risk relating to the loss of or damage to the products that are the subject of the Agreement will pass to the Buyer/Client at the time that those products are legally and/or actually delivered to the Buyer/Client and therefore come under the Buyer's/Client's control or under the control of third parties designated by the Buyer/Client.

#### **Article 18      Force majeure**

- 18.1. The phrase '*force majeure* on DESU's part' will be understood to include any circumstances outside its control, for which it is not to blame and which is not for its account pursuant to the law, a juristic act or standard commercial practice, which fully or partially prevent the performance of its obligations vis-à-vis the Buyer/Client or as a result of which it cannot be reasonably expected to perform its obligations, irrespective of whether such circumstance could have been foreseen at the time of the agreements' conclusion. Such circumstances will also include strikes, illness of staff and unforeseeable delays. The term '*force majeure*' will also include any situation of *force majeure* on the part of DESU's suppliers.
- 18.2. If DESU is unable to perform its obligations due to *force majeure*, these obligations will be suspended for the time that the situation of *force majeure* lasts.
- 18.3. If the situation of *force majeure* has lasted two (2) months, either party will be entitled to fully or partially dissolve the agreement by means of a written, substantiated statement sent by registered post, without any right to damages or compensation arising.
- 18.4. The parties will notify each other of a possible or actual situation of *force majeure* in writing, by registered letter, as soon as possible.
- 18.5. DESU will expressly be entitled to invoke *force majeure* if the circumstance preventing performance or further performance arises after DESU should have performed its obligations.
- 18.6. Insofar as DESU has effected or will be able to effect partial performance of its obligations ensuing from the Agreement at the time that the situation of *force majeure* arises, and such partial performance has independent value, DESU will be entitled to invoice the performed part separately. The Buyer/Client will be obliged to pay that invoice as if it pertained to a separate agreement.

#### **Article 19      Indemnification**

- 19.1. The Buyer/Client will indemnify DESU against any claims of third parties relating to intellectual property rights to materials or data made available by the Buyer/Client which are used during the performance of the Agreement.
- 19.2. If the Buyer/Client provides DESU with data carriers, electronic files, software, etc., it must guarantee that such data carriers, electronic files, software, etc., are virus-free and without defects.

#### **Article 20      Intellectual property and copyrights**

- 20.1. Without prejudice to the other provisions of these General Terms and Conditions, DESU reserves the rights and powers vested in it pursuant to the Dutch Copyright Act [*Auteurswet*].
- 20.2. The Buyer/Client will not be permitted to modify goods, unless the contrary follows from the nature of the goods supplied or has been agreed in writing.
- 20.3. Any designs, sketches, drawings, films, software and other materials or electronic or other files created by DESU in the context of the Agreement will remain DESU's property, irrespective of whether same have been made available to the Buyer/Client or to third parties, unless the contrary has been agreed.
- 20.4. All documents and items made available by DESU, such as designs, sketches, drawings, films, software, electronic or other files, etc., are intended for use by the Buyer/Client only, and may not be

reproduced, made public or disclosed to third parties by the Buyer/Client without DESU's prior permission, unless the contrary ensues from the nature of the documents and items.

- 20.5. DESU will retain the right to use any knowledge acquired during the performance of the Work for other purposes, insofar as this does not involve making confidential information available to third parties.

#### **Article 21 Confidentiality**

- 21.1. Both parties will be obliged to observe secrecy with respect to all confidential information which they may have obtained from one another or from another source in the context of the Agreement. Information will be considered confidential if it has been designated as such by the relevant party or if its confidential nature ensues from the nature of the information.
- 21.2. If DESU is obliged pursuant to a statutory provision or a judicial decision to provide third parties designated by law or by the competent court with confidential information and DESU is unable to invoke a right to decline to give information acknowledged or allowed by law or by the competent court, DESU will not be obliged to compensate the other party or pay it damages and the other party will not be entitled to dissolve the Agreement on the basis of any damage that may have arisen as a consequence.
- 21.3. The Buyer/Client will not be permitted to use any information made available by on or behalf of DESU for any other purpose than that for which it was provided.

#### **Article 22 Non-acquisition of staff**

- 22.1. During the Agreement's term and for one year following its termination, the Buyer/Client will refrain – except following proper professional negotiations in this respect with DESU – from acquiring or employing in any other way – directly or indirectly – employees of DESU or enterprises engaged by DESU for purposes of this Agreement, who are or were involved in the performance of the Agreement.
- 22.2. The prohibition laid down in paragraph 1 will be subject to the forfeiture of an immediately due and payable penalty of EUR 5,000 per event and EUR 500 for each day that the Buyer/Client's violation continues, payable to DESU, without prejudice to DESU's right to claim full damages insofar as such a claim might exceed the said penalty.

#### **Article 23 Agreement for placement/installation**

- 23.1. The conclusion of an Agreement will be subject to the condition that the goods to be placed/installed were sold and supplied by DESU to the Buyer/Client.
- 23.2. The wishes of the Buyer/Client will be taken into account during the placement/installation of goods sold and supplied by DESU and the manner in which such activities are carried out, insofar as this is possible and sound in the opinion of the contractor/mechanic engaged by DESU.
- 23.3. The prices fixed in the quotation will be based on the Work normally involved in such placement/installation. Work normally involved in placement/installation will not include demolition work, carpentry, painting, opening up and closing ceilings and installing and moving telephone and electricity connections.
- 23.4. If, in the contractor's/mechanic's opinion, the situation cannot be considered standard, DESU will so inform the Buyer/Client in writing and issue a supplementary quotation for the additional price relating to the additional work to be performed.
- 23.5. After the placement/installation has been completed, the Buyer/Client will consign a document evidencing the proper completion of the Work and submit same to DESU.

#### **Article 24 Agreement on the performance of placement/installation work**

- 24.1. Appointments made may be postponed or cancelled until 48 hours before the relevant appointment. If agreements are postponed or cancelled at a later point in time, the Buyer/Client will be charged costs.

- 24.2. The Buyer/Client shall enable the persons designated by DESU to perform the necessary Work, in accordance with the agreements made. If so requested, these persons will identify themselves.
- 24.3. If the Buyer/Client fails to perform any agreements, without issuing a timely notice in advance, the Buyer/Client will be charged the costs of the unnecessary visit.

**Article 25 Nullity, annullability**

- 25.1. If any provision of these General Terms and Conditions is null and void or annulable, this will not affect the validity of the other provisions.

**Article 26 Conversion**

- 26.1. If and insofar as any provision in these General Terms and Conditions cannot be invoked pursuant to standards of fairness and reasonableness or in view of its unreasonably objectionable nature, the relevant provision will be considered to have such a meaning as regards its substance and purport that it can be invoked.

**Article 27 General**

- 27.1. This Agreement covers all agreements made by the parties in connection with the Agreement's subject. As per the Agreement's effective date, any earlier agreements made between the parties will lapse.
- 27.2. The parties undertake to notify one another in good time of any changes of address by registered letter.
- 27.3. These General Terms and Conditions may be amended by DESU at all times. Such changes will apply to existing agreements effective from 14 days after they have been communicated. Such a communication may also consist of a notice with or on an invoice sent to the Buyer/Client.

**Article 28 Competent court**

- 28.1. Any disputes that may arise between the parties further to one or more Agreements existing between them or further to any subsequent agreements, that may ensue from same or from any existing or future legal relationship, will be settled by the competent court in Rotterdam, the Netherlands, except insofar as this choice of forum is prevented by mandatory rules on judicial competence.
- 28.2. A dispute will be presumed to have arisen if one of the parties so declares.

**Article 29 Applicable law**

- 29.1. Any agreements between DESU and the Buyer/Client will be governed by Dutch law, subject to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

**Article 30 Amendments to, interpretation of and filing of the General Terms and Conditions**

- 30.1. These Terms and Conditions have been filed at the offices of the Rotterdam Chamber of Commerce.
- 30.2. In the event of a difference in interpretation regarding the substance and purport of these General Terms and Conditions between a translation and the Dutch text, the Dutch text will prevail.
- 30.3. The version that was most recently filed and/or the version that applied at the time of the Agreement's conclusion will apply.