

**GENERAL TERMS AND CONDITIONS (GTC)  
E-CON SOLUTIONS  
(VERSION MAY 2018)**

**1. DEFINITIONS**

In addition to the definitions stipulated in these General Terms and Conditions of e-Con Solutions (*“the GTC”*), the following terms shall have the following meaning, unless the specific context clearly dictates otherwise.

Words importing the singular number shall include the plural and vice versa.

- 1.1 **Affiliate:** any legal entity that a Party controls, that controls a Party, or that is owned by a legal entity that is under common ownership with a Party. As applied in this definition, ownership shall be construed to be legal possession of greater than fifty percent (50%) of the Company shares, interest in, or voting rights in an entity.
- 1.2 **Agreement:** any agreement between the Parties, including, but not limited to, an MSA, SOW or LA.
- 1.3 **Customer:** the company and any of its Affiliates that have entered into an Agreement or have a legal relationship with e-Con Solutions.
- 1.4 **Documentation:** all materials published or otherwise made available to the Customer by e-Con Solutions, including all materials that relate to, or describe, the functional, operational and/or performance capabilities of the Software, whether provided in electronic, physical media, hard copy, or other form, including, but not limited to, user guides and manuals for the installation and use of the Software.
- 1.5 **e-Con Solutions:** e-Con Solutions B.V. and any of its Affiliates, including but not limited to e-Con LLC.
- 1.6 **Fee:** any and all fees to be paid by the Customer to e-Con Solutions.
- 1.7 **LA:** a license agreement between the Parties regulating the License to Software.
- 1.8 **LA Perpetual Based:** the LA regulating a perpetual License.
- 1.9 **LA Subscription Based:** the LA regulating a License under a subscription model.
- 1.10 **License:** a license granted by e-Con Solutions to the Customer under a perpetual license model or a subscription license model, pursuant to an LA.
- 1.11 **Licensee:** the Customer that has entered into an LA.
- 1.12 **License Code:** the code that, like a key, grants the Licensee access to use the Software.
- 1.13 **MSA:** the master service agreement between the Parties regulating the terms and conditions of the performance, delivery and acceptance of the Services and the SOW (Statement of Work).
- 1.14 **Parties:** the Customer and e-Con Solutions.
- 1.15 **Personal data:** data relating to an individual who is or can be identified either from the data or from the data in conjunction with other information.
- 1.16 **Services:** advisory, consulting, instructional, technical and any other services in the broadest sense of the word supplied by e-Con Solutions to the Customer, pursuant to an MSA.
- 1.17 **Software:** computer programs developed by e-Con Solutions and licensed to pursuant to an LA.
- 1.18 **SOW:** a statement of work regulating the performance, delivery and acceptance of stipulated Services, pursuant to an MSA.

## **2 SCOPE OF APPLICATION**

- 2.1 The GTC apply to and are an integral part of any Agreement and or any legal relationship between the Parties, unless the Parties expressly agree otherwise in writing.
- 2.2 In the event of any conflict between these GTC and any Agreement, the terms and conditions of the Agreement shall prevail, provided that the Parties have explicitly agreed, in writing, that the conflicting provisions of the Agreement shall prevail.
- 2.3 By signing the GTC, the Customer accepts and agrees that the GTC shall govern any Agreement or legal relationship between the Parties.
- 2.4 General conditions or other general terms and conditions the Customer may use are not applicable. The Customers waives application of any general conditions or standard conditions other than the GTC.
- 2.5 The GTC shall also apply for the benefit of all natural persons and legal entities that e-Con Solutions engages in the performance of any Agreement or legal relationship between the Parties.
- 2.6 e-Con Solutions is entitled to modify or waive provisions set out in the GTC. If said amendment applies to the Customer and constitutes a substantial change of legal position, the Customer shall be entitled to terminate any Agreement, in writing and within fourteen (14) days following the notification of the adjustment, which termination shall take effect on the date the amendments take effect.
- 2.7 e-Con Solutions reserves the right to transfer its rights and obligations under any Agreement or legal relationship, in whole or in part to a third party.

## **3 PRICE, TAXES AND CURRENCIES**

- 3.1 Prices and fees do not include taxes (such as sales tax), surcharges, duties, tariffs, levies, disbursements of any kind or costs for engaging third parties. Unless agreed upon otherwise, prices do not include expenses for travel, accommodation or any other out-of-pocket expenses incurred by e-Con Solutions, its personnel, sub-contractors or other parties engaged in connection with the delivery of the Services or Agreement.
- 3.2 The Customer is responsible for the payment of all relevant taxes, surcharges, duties, tariffs, levies, disbursements of any kind or costs for engaging third parties. e-Con Solutions shall be entitled to invoice the Customer for such costs. If e-Con Solutions is required to impose, levy, collect, withhold or assess any such amounts, e-Con Solutions shall invoice the Customer for such costs.
- 3.3 Prices shall be in accordance with the prices set forth at the time of signing of any Agreement or, if no price is agreed upon, the price set out in e-Con Solutions published price list at the date of delivery.
- 3.4 e-Con Solutions is entitled to adjust the applicable prices and rates. The Customer shall be entitled to terminate any Agreement, in writing and within thirty (30) days following the notification of the adjustment, which termination shall take effect on the date the new prices and/or rates take effect.
- 3.5 The Customer shall pay all amounts due under any Agreement in full without any deduction or withholding except as required by mandatory provisions of the applicable law. The Customer shall not be entitled to assert any credit, set-off or counterclaim against e-Con Solutions, in order to justify withholding payment of any amount due in whole or in part. If any withholding or deduction is required by mandatory provisions of the applicable, the Customer shall, when making the payment to which the withholding or deduction relates, pay to e-Con Solutions an additional amount ensuring that e-Con Solutions receives the same total amount that it would have received if no such withholding or deduction had been required.
- 3.6 The Customer shall remit the amount due on the invoice in the currency indicated on the invoice.

- 3.7 e-Con Solutions has the right to apply an annual increase to the applicable prices and rates of periodic fees and charges at the beginning of each calendar year. The indexation rate will never exceed the Dutch Consumer Price Index of (CPI) established in August of the previous calendar year. <http://www.inflation.eu/inflation-rates/the-netherlands/inflation-the-netherlands.aspx>

#### **4 INVOICING AND PAYMENT**

- 4.1 Invoices shall be sent to the address specified in any Agreement.
- 4.2 e-Con Solutions will invoice the Customer on a weekly basis, unless otherwise agreed upon.
- 4.3 Unless otherwise agreed upon, payment of invoices will take place within fourteen (14) days from the date of invoice ("*Payment Term*"), without deductions, suspension or settlements.
- 4.4 The payments e-Con Solutions receives are first to be applied in settlement of the outstanding costs, subsequently in payment of the interest due and finally in payment of the remuneration due.
- 4.5 Should the Customer dispute any invoice, the Customer shall notify e-Con Solutions of the nature of the dispute in writing within five (5) calendar days of the invoice date. If the Customer does not notify e-Con Solutions of any dispute within five (5) calendar days of the invoice date, the invoice shall be deemed to have been accepted. Notwithstanding any dispute regarding the invoice, the Customer shall not have the right to withhold payment of the disputed invoice.
- 4.6 In the event of payment in breach with the Payment Term, the Customer will automatically be in default without a demand for payment or a notice of default being required.
- 4.7 In the event the Customer is in default, the Customer will be charged a monthly interest rate of 1.5% per month on the amount due and extrajudicial collection costs, subject to a minimum of EUR 150,00, or the equivalent in local currency. When calculating interest, part of a month is considered as a whole month.
- 4.8 In the event the Customer is in default, e-Con Solutions shall be entitled to refer the debt for collection, in which case the Customer shall be held liable for all extrajudicial costs, and, if applicable, costs for legal enforcement. If judgment is rendered in favor of e-Con Solutions in legal proceedings, all costs incurred in relation to these proceedings will be borne by the Customer.
- 4.9 Payments due to e-Con Solutions will be deemed payable forthwith and in full in the event of the following.
- i. The Customer requests suspension of payments, files for bankruptcy or has been declared bankrupt.
  - ii. The entirety and/or a part of the Customer's assets are subject to attachment.
  - iii. The Customer ceases or alienates its business operations or a significant part thereof, transfers shares therein to a third party, or changes the nature thereof.
  - iv. The Customer is dissolved or wound up.

#### **5 INTELLECTUAL PROPERTY RIGHTS**

- 5.1 All intellectual property rights to the Software, as well as other materials in this regard, developed or made available to The Customer under any Agreement or legal relationship, are held exclusively by e-Con Solutions, its licensors or its suppliers. The Customer acknowledges the aforementioned intellectual property rights of the Software.
- 5.2 Any work product developed pursuant to an MSA is not to be considered made-for-hire and at all stages of development, will remain the sole and exclusive property of e-Con Solutions. The Customer further agrees that it will take all actions and execute and deliver all documents requested by e-Con Solutions in order to evidence e-Con Solutions' rights in and to the work product.

- 5.3 The Customer shall have the rights of use expressly granted under the GTC, any Agreement, or legal relationship, concluded in writing. Any right of use is non-exclusive and may not be transferred, pledged or sublicensed.
- 5.4 At no time, during any Agreement, or legal relationship, or at any time thereafter, shall the Customer conduct the following.
- i. Challenge, or cause to be challenged, e-Con Solutions' intellectual property rights (or any of its licensee's) use anywhere in the world.
  - ii. 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, equipment or materials, or have any such indication removed or changed.
  - iii. Break or change any License Files/Codes.
  - iv. Reverse engineer, disassemble or decompile the Software, except where and only to the extent that such operations are permitted according to mandatory, statutory legislation and The Customer shall comply with that legislation in all respects.
- 5.5 Even if not expressly provided for in any Agreement, or legal relationship, e-Con Solutions may always take technical measures to protect the Software, as well as other materials in this regard, 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.
- 5.6 Any disregard of e-Con Solutions or its licensor's rights, including inappropriate access to the Software, which might render copying of License Files/Codes to the Software possible for third parties, shall be deemed to be a material breach of an Agreement and shall entitle e-Con Solutions to terminate an Agreement and pursue all remedies available to it.
- 5.7 The Customer guarantees that equipment, software, material intended for websites, data files and/or other materials and/or designs available to e-Con Solutions for the use, maintenance, processing, installation or integration does not infringe any rights of third parties. The Customer indemnifies e-Con Solutions 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 a third party.
- 5.8 e-Con Solutions shall only transfer an intellectual property right if agreed upon expressly and in writing.

## **6 INFRINGEMENT OF THIRD PARTY RIGHTS**

- 6.1 e-Con Solutions will indemnify, defend and hold the Customer harmless from and against any liabilities, damages, costs and expenses incurred by the Customer arising from or relating to a claim or allegation against the Customer that the Software infringes the registered copyright, trademark, patent or other intellectual property right of any third party (hereinafter referred to as: "*Infringement Claim*"), provided that:
- i. the Customer is and has continuously used the Software strictly in accordance with the terms of any Agreement;
  - ii. the Customer notifies e-Con Solutions in writing of the Infringement Claim as soon as it becomes aware of such Infringement Claim;
  - iii. allows e-Con Solutions to fully control the defense and any related settlement negotiations;
  - iv. cooperates with e-Con Solutions in the defense and any related settlement negotiations by providing e-Con Solutions with appropriate information and assistance needed for such defense or settlement; and
  - v. the Customer has made no admission as to liability.
- 6.2 Where the terms and conditions in the preceding clause are not fulfilled, e-Con Solutions will be entitled to defend the Infringement Claim. Upon notifying the Customer that e-Con Solutions intends to do so, it will be irrevocably authorized by the Customer, to the extent legally possible, to assume the defense of the legal suit or proceedings brought forward

- against the Customer, and may institute proceedings or enter into settlements concerning the Infringement Claim. The Customer will provide e-Con Solutions with appropriate information or assistance for such defense or settlement.
- 6.3 In the event of an Infringement Claim, e-Con Solutions will be entitled to either:
- i. obtain the continued right for the Customer to use the Software;
  - ii. bring the infringement to an end by modifying the Software or replacing the Software with other software which, essentially, possesses the same functions as the affected Software; or
  - iii. terminate this Agreement with written notice and pay to the Customer an amount equal to the fees actually paid for by the Customer, provided that the Infringement Claim is actually raised against the Customer within a period of three (3) years following the date of the Customer's signature of this Agreement.
- 6.4 If an Infringement Claim is raised against the Customer after the period stated in the preceding clause has expired, e-Con Solutions shall be entitled to terminate any Agreement or legal relationship without payment of any amount to the Customer.
- 6.5 The performance of e-Con Solutions' obligations under the previous clause shall be e-Con Solutions' total aggregate liability and the Customer will have no other claims against e-Con Solutions.
- 6.6 The limited warranty stated in the preceding clauses of this chapter is void if the Infringement Claim has resulted from accident, abuse or misapplication. Any modification of the Software by anyone other than e-Con Solutions voids the foregoing warranty on any portion of the Software modified or affected by such modification.

## **7 DELIVERY, TITLE AND RISK TRANSFER**

- 7.1 Unless otherwise agreed upon in an Agreement and if Parties agree to such a transfer, a right of ownership shall pass, and be considered delivered, to the Customer upon full payment of the relevant invoice. The right of ownership concerning the Software shall never be transferable.
- 7.2 Upon delivery, the risk of loss or damage shall pass to the Customer. If delivery has been delayed on account of the Customer, the risk of loss shall pass to the Customer upon the originally scheduled delivery date.
- 7.3 The risk of loss, theft, misappropriation or damage of items, information (including user names, codes and passwords), documents, software or data files that are created, supplied or used in the context of performing any Agreement is referred to the Customer.

## **8 PRIVACY AND DATA PROCESSING**

- 8.1 Parties acknowledge that the performance of any Agreement may involve processing of Personal Data within the meaning of data protection legislation, including, but not limited to Regulation (. Parties agree that if, and to the extent that, the Customer or e-Con Solutions processes any Personal Data, it does so on its own behalf and that each Party will qualify as a data controller within the meaning of US Regulation. As such, Parties shall at all times comply with its respective mandatory obligations under applicable data protection legislation.
- 8.2 In the event that Parties provide each other with Personal Data, they shall keep this Personal Data confidential and shall implement adequate technical and organizational measures to protect it against accidental, unlawful or unauthorized destruction, loss, alteration, disclosure or access.
- 8.3 Both Parties shall ensure that only such personnel, who may be required to assist in meeting its obligations under any Agreement or legal relationship, shall have access to the Personal Data and that such employees have received instructions in the care and handling of Personal Data.
- 8.4 The Customer shall ensure that the persons whose Personal Data shall be processed in connection with any Agreement or legal relationship, will be informed of the purpose of such processing by e-Con Solutions, and of such other information as may need to be

- provided to the Customer's employees in order to comply with applicable data protection legislation.
- 8.5 If necessary for the performance of any Agreement or legal relationship between the Parties, the Customer shall inform e-Con Solutions in writing about the way in which the Customer performs the Customer legal obligations regarding the protection of Personal Data.
- 8.6 The Customer indemnifies e-Con Solutions 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 e-Con Solutions.
- 8.7 The Customer is fully responsible for Personal Data that it processes in the context of using the Services of e-Con Solutions. The Customer guarantees e-Con Solutions that the content, use and/or processing of Personal Data are not unlawful and do not infringe any right of a third party. The Customer indemnifies e-Con Solutions against any claim of a third party instituted for whatever reason in connection with Personal Data or the performance of any Agreement or legal relationship.
- 8.8 Notwithstanding the aforementioned, e-Con Solutions shall in no event be liable for any loss, damage or breach of confidentiality or privacy to Personal Data.

## **9 CONFIDENTIALITY**

- 9.1 Parties ensure that all information received from each other should be treated as confidential. This duty of confidentiality shall not apply if and insofar as the parties are 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 any Agreement.
- 9.2 Confidential information that e-Con Solutions or the Customer receives, may only be used 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 e-Con Solutions or the Customer.
- 9.3 Parties shall impose the obligations referred to in this article on personnel, sub-contractors or other third parties involved in the performance of any Agreement, or legal relationship.
- 9.4 The Customer acknowledges that the Software is confidential and that the Software can contain commercial secrets of e-Con Solutions. The Software falls under the remit of clause 8 of these GTC.
- 9.5 Notwithstanding the aforementioned, e-Con Solutions shall in no event be liable for any loss, damage or breach of confidentiality.

## **10 NON-SOLICITATION CLAUSE**

- 10.1 During any Agreement and within a period of 2 years after the termination or ending thereof, neither Party nor its Affiliate will, without the express written consent of the other Party, solicit the employment of any employee or contractor of the other Party.

## **11 LIMITED WARRANTY**

- 11.1 In no event will e-Con Solutions be liable for adjustments to or processing of, in the broadest sense of the word, to the Software performed by the Customer or provided by third parties.
- 11.2 e-Con Solutions accepts no liability for any defects, which are a consequence of external factors, including other programs, or a consequence of integration of or interaction between the Software and the Customer's own hardware and software environments.
- 11.3 The total liability of e-Con Solutions shall be limited to the compensation for direct loss or damage suffered and shall be limited to the amount that is paid out under the liability insurance of e-Con Solutions. If the liability insurance does not cover the liability or the

- suffered direct damages, the total liability shall never exceed the amount the Customer has paid to e-Con Solutions under or in relation to the relevant Agreement, with a maximum of EUR 100.000,00 (one hundred thousand euro), regardless of whether any action or claim is based in contract, misrepresentation, strict liability, or other tort.
- 11.4 A right to claim compensation by the Customer shall have to be preceded by a written report of non-performance to e-Con Solutions as soon as possible after the defect or loss has occurred, but in any case within fourteen (14) days after the defect or loss having been noted.
- 11.5 Unless agreed upon otherwise, Parties can only claim compensation for any loss or damage if the injured party has delivered a written notice to the non-performing Party in which a reasonable term is given to remedy the breach, and the other Party fails imputably to fulfill the obligations arising out of or in connection with this Agreement.
- 11.6 The statute of limitations for any claim against e-Con Solutions is one year from the day the Customer knew or reasonably could have known the facts upon which the claim of the Customer is based.
- 11.7 In no event will e-Con Solutions be liable for any indirect, incidental, special consequential, or punitive damages or losses, including without limitation, loss of use, profits or goodwill, or loss of data, data files or programs, arising out of or in connection with any Agreement or legal relationship, regardless of whether the cause of action is in contract or tort, even if advised in advanced of the possibility of such loss or damage.
- 11.8 e-Con Solutions shall not be liable for damage resulting from the use of electronic means of communication, including damage due to non-delivery or delay in delivery of electronic messages by third parties, interception or manipulation with electronic messages by third parties or by software/equipment used for electronic communications and transmission of viruses and other malicious software.
- 11.9 e-Con Solutions disclaims any product liability as a consequence of loss or damage to property, which, in view of its nature, is normally intended for commercial use.

## **12 FORCE MAJEUR**

- 12.1 Neither Party shall be held liable for any damage of the other as a direct or indirect consequence of non-performance, delay or impediment, as a result of a force majeure situation.
- 12.2 Force majeure situations include war, catastrophes of nature, strikes, lockout, fire, lack of power or energy, breakdown of machinery, import and export regulations and other unforeseeable circumstances beyond the control of the party concerned.

## **13 APPLICABLE LAW AND JURISDICTION**

- 13.1 The laws of the Netherlands govern these Conditions and any Agreement or legal relationship.
- 13.2 Any dispute, controversy or claim arising out of or in connection with any Agreement or legal relationship, shall be submitted to:
- i. "Stichting Geschillen oplossing Automatisering" (Automation Disputes Board), in Wassenaar, the Netherlands; or;
  - ii. The competent Dutch Court of "Midden-Nederland", in Utrecht, the Netherlands; or;
  - iii. The "Netherlands Commercial Court", in Amsterdam, the Netherlands
- 13.3 Parties waive all defenses of lack of personal jurisdiction and forum non-convenience.
- 13.4 All communications required or permitted to be given hereunder shall be sent to the other Party at its address set forth below or to such other address as may be notified in writing by either Party to the other. Notices shall be deemed received upon actual receipt.

**14 MISCELLANEOUS**

- 14.1 If any provision of the GTC or any Agreement is held to be illegal, invalid or unenforceable, such provision shall nonetheless be enforced to the fullest extent permitted by applicable law as stipulated in the GTC, so as to reflect the original intent of the Parties, and such provision shall not affect the legality and validity of the other provisions.
- 14.2 Termination of any Agreement or legal relationship shall not affect the survival of the provisions which have been construed to survive the termination, such as, but not limited to, the provisions regarding the limitation and exclusion of liability of e-Con Solutions as stipulated in the GTC.
- 14.3 The information the Customer provides to e-Con Solutions, as well as the information we have collected about the Customer indirectly, such as trademarks, service marks and logos, may be used by e-Con Solutions for marketing purposes, such as in presentations and newsletters.
- 14.4 All communications required or permitted to be given hereunder and any Agreement shall be sent to the other Party at its address set forth in the Agreement or to such other address as may be notified in writing by either Party to the other. Notices shall be deemed received upon actual receipt.

- Signature page to these GTC below -

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Date of signing \_\_\_\_\_  
The Customer's name: \_\_\_\_\_  
Name of the signatory: \_\_\_\_\_

Signature: \_\_\_\_\_  
Company stamp:

**e-Con Solutions**

Date of signing \_\_\_\_\_  
Name of the signatory: \_\_\_\_\_

Signature: \_\_\_\_\_

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