



## GENERAL TERMS AND CONDITIONS OF LIVINGSTON T&M B.V.

As filed with the Chamber of Commerce for the district of Utrecht under no. 30220682.

### I GENERAL CONDITIONS

#### 1. Definitions

In these general terms and conditions the following terms shall mean:

##### Livingston:

The private company with limited liability Livingston T&M B.V., with its registered offices and principal place of business at Veenendaal and every company or enterprise affiliated to it;

##### Client:

any person or party who has received an offer from Livingston and/or with whom Livingston has concluded an agreement;

##### Equipment:

The computer equipment and software sold and delivered and /or rented and made available to Client by Livingston, including all peripheral appliances and accessories, all in the widest possible sense. Where these general terms and conditions make mention of 'goods' or 'products', these shall be taken to mean Equipment, as referred to in the preceding sentence.

#### 2. Applicability of general terms and conditions

- 2.1 These general terms and conditions shall apply to all offers of Livingston and each agreement concluded between Livingston and its Clients.
- 2.2 Livingston explicitly rejects any terms or conditions declared to apply by a Client, even if any such terms and conditions were previously mentioned by Client. Applicability of Client's own terms and conditions shall require Livingston's explicit written approval.
- 2.3 If there are contradictions between Livingston's general terms and conditions and Client's, these present terms and conditions shall take precedence.
- 2.4 The general stipulations as set out in these terms and conditions shall apply equally for all that which is settled in special conditions, unless those special conditions should provide otherwise.

#### 3. Offer and agreement

- 3.1 Every offer, which includes draft (rental) agreements, imagery, drawings, capacity specifications, schedules, quotations, stocklists and any other documentation, shall be free of obligation on the part of Client unless the offer specifies an acceptance period or otherwise stipulates that the offer is not free of obligation.
- 3.2 If an offer from Livingston is an obligation-free offer and if the offer is accepted by Client, Livingston shall be entitled to withdraw the offer within two workdays after Client has notified his acceptance thereof.
- 3.3 An agreement shall not be established until Livingston has confirmed the order in writing or has actually commenced with the execution of the agreement.
- 3.4 Verbal agreements or arrangements shall never be able to commit Livingston, unless these are explicitly agreed to in writing by Livingston. Livingston reserves the right to introduce changes of a technical nature. The descriptions and specifications given in an offer shall be as accurate as possible, however, they shall not be binding to Livingston.
- 3.5 Changes at variance with an agreement concluded with Client and these general terms and conditions shall only commit Livingston in as much as they have been agreed between them in writing.
- 3.6 If an order for the delivery of goods or the performance of services or work is cancelled, Livingston shall reserve the right to charge Client for all expenses incurred in order to prepare the offer.

#### 4. Changes and extra work

- 4.1 Changes requested by Client with respect to the (execution of) an agreement after the order has been placed shall be required to be reported by Client to Livingston in writing, prior to Livingston's commencing with the agreement. If the changes requested by Client in the opinion of Livingston could adversely affect the implementation of the agreement, Livingston shall be authorised on such grounds to dissolve the agreement out of court. In such cases Livingston shall not be liable for any loss suffered by Client due to the dissolution, regardless the nature or extent thereof.
- 4.2 If Livingston accepts the changes proposed to the original agreement, Client shall be obliged to pay Livingston for all (additional) costs arising from the changes, as extra costs, undiminished Client's other financial obligations vis-à-vis Livingston under the terms of the agreement concluded between them.
- 4.3 If any changes as referred to in this article should cause the performance of an agreement to be delayed, the delivery/completion dates advised by Livingston shall be extended with the period of the delay, undiminished what is provided elsewhere in these terms and conditions concerning force majeure. Livingston shall never be liable vis-à-vis Client for any such delays.
- 4.4 If it is otherwise considered by Livingston that if the agreement involves extra work, Livingston shall inform Client accordingly without delay. In this case Livingston shall provide Client with an indication of the consequences of the

extra work for the completion date of the agreement and the costs associated with the extra work.

- 4.5 If Client has not advised Livingston that he objects to the extra work within four workdays after receiving advice as referred to in subsection 4.4., Client shall be deemed to have accepted the extra work and shall be obliged to meet the (additional) cost charged by Livingston for the extra work.

#### 5. Delivery/completion dates

- 5.1 All delivery timelines or completion dates advised by Livingston to Client concerning deliveries and/or completion of work under the agreement shall serve as indications only and shall never be taken to imply a fixed and firm deadline, not even if they have been mentioned as latest date of delivery or completion.
- 5.2 Other than in cases as referred to in article 4 above, if the execution by Livingston of an agreement cannot take place within the agreed timeline, Livingston shall inform Client as soon as possible of the timeline within which the agreement can be completed.
- 5.3 If a timeline advised by Livingston has been exceeded, Livingston shall not be in default until having been served written notice of default by Client and until such time as having been given a reasonable period to meet its obligations to Client as yet. Such a reasonable period shall not be less than half the original period agreed for execution of the agreement.

#### 6. Payment and non-fulfilment

- 6.1 Payment by Client shall take place as follows:
    - (a) For an agreement of sale and purchase:

Payment to be effected upon delivery of the goods, unless otherwise agreed;
    - (b) For an agreement of maintenance:

A payment in advance, equal to the price of the agreed first-time maintenance service, must have been received on the first day of installation by Livingston of the goods (supplied or delivered by Livingston). Subsequent maintenance instalments shall be due and payable - unless otherwise agreed - on the first day of each calendar month thereafter.
    - (c) For an agreement for services and / or work:

Payment of invoices due to Livingston must be effected within two weeks after termination and / or completion of the services and/or work performed by Livingston.
    - (d) For a rental agreement / provision of Equipment and / or other movable goods:

The periodic rent as described in Article 15, payable by Client in advance, without set-off or discount. Payment of the first monthly rent shall be effected on behalf of Livingston upon delivery of the Equipment and / or other movable property, whereas payment of the subsequent rent periods shall be due within 14 days after receipt of the relevant invoice from Livingston.
  - 6.2 All payments to be effected by way of transfer to a bank or giro account appointed by Livingston.
  - 6.3 Client shall not be authorised to appropriate his financial obligations for set-off or financial settlement. All payments effected by Client shall be allocated, first, towards fulfilment of any interest and costs owed (whether made in or out of court) and thereafter towards fulfilment of moneys longest outstanding, regardless of whether or not Client may indicate that the payment refers to another invoice.
  - 6.4 The existence of a complaint concerning a performance of Livingston shall never authorise Client to suspend his financial obligations or to require a settlement against invoice.
  - 6.5 Livingston shall be authorised at all times to require prepayment, cash payment, or (additional) security for the fulfilment of Client's financial obligations.
  - 6.6 If Client fails to effect a payment or to timely or fully effect a payment, he shall be in default without notice of default being required, in which case he shall owe Livingston 1.5 % interest per month, whereby any part of a month applies as a whole month. In the event, Client shall be liable for all in and out of court expenses incurred by Livingston in order to collect the receivables from Client, undiminished all other rights coming to Livingston, including the right to demand compensation or compliance. These costs shall be set at 15% of the outstanding invoice amount including VAT, unless the actual costs are higher. If so all actual expenses, whether incurred in or out of court, shall be for Client's account.
  - 6.7 The existence and discharge of Client's financial obligations shall be evidenced by relevant extracts from Livingston's financial accounts system.
- #### 7. Suspension and dissolution
- 7.1 If Client fails to meet or does not timely or fully meet any of his obligations vis-à-vis Livingston, Livingston shall be authorised - without prejudice to all its other rights - to suspend the fulfilment of all its obligations vis-à-vis Client (including any (subcontracted) performance of repairs and/or maintenance work) until such time as Client has fully satisfied his financial obligations vis-à-

- vis Livingston.
- 7.2 Livingston shall, in addition to all other rights coming to it, be authorised to dissolve the agreement, without requiring prior notice of default or court intervention, by way of a written out-of-court statement, if:
- (a) there is a permanent situation of force majeure as referred to in Article 8.1 of these general terms and conditions;
- (b) Client, despite having been properly served notice of default, fails to timely, properly or fully meet any of his obligations vis-à-vis Livingston under the terms of an agreement;
- (c) Client is granted (provisional) suspension of payment; or of a petition for bankruptcy is filed by Client or on his behalf; if a debt restructure order is declared applicable to Client; if Client proposes a (private) composition to his creditors, or if he calls a meeting of creditors for the purpose;
- (d) Client's business is liquidated and/or his business operations are actually ceased or have been relocated outside the Netherlands;
- (e) Client's assets are placed under administration; or a part of his assets are attached and the attachment is in effect for at least one month; or if Client's assets are otherwise the subject of legal recourse;
- (f) the control structure of Client's business has changed to such an extent that proper compliance of Client's obligations can no longer be assured or is at risk.
- 7.3 Client is obliged to inform Livingston without delay should any of the situations described under article 7(2) arise. Client shall, furthermore, provide Livingston with any information as deemed necessary by Livingston with a view to exercising its rights under the agreement.
- 8. Force Majeure**
- 8.1 In the event of permanent force majeure, which includes any circumstance beyond Livingston's control and which encumbers or entirely obstructs the agreed delivery or performance, such as operational down-time, failure in the supply of energy or material, transportation delays, industrial action, and non-delivery or untimely delivery by Livingston's ancillary suppliers, Livingston shall be authorised to declare the agreement dissolved, without requiring court intervention, by way of a written statement. In the event, Livingston shall not be liable vis-à-vis Client for any loss suffered by Client, irrespective the nature and extent thereof.
- 8.2 In the case of a temporary circumstance of force majeure Livingston shall be authorised to suspend the fulfilment of its obligations under the agreement until the temporary circumstance has ceased to exist. In the event, Client shall be entitled to demand (partial) dissolution of the agreement if it cannot reasonably be required of him to accept the goods or the performance under the sufferance of delay, however, this leaves undiminished Client's (financial) obligations with respect to that part of the agreement that has already been executed by Livingston and neither shall Client, in the event, be entitled to demand any form of compensation. Client shall only be able to demand (partial) dissolution of the agreement if this occurs within five workdays after having been informed about Livingston's temporary inability to fulfil the agreement due to circumstances of force majeure.
- 9. Complaints**
- 9.1 The Client is obliged to inform Livingston without delay of any complaint concerning Livingston's execution of the agreement. Complaints must in any case be made known to Livingston in writing within three days after completion of the agreement, or, respectively, within three days after the complaint is discovered or reasonably could have been discovered, otherwise any claim against Livingston in relation to the agreement shall expire.
- 9.2 If Livingston judges a complaint to be a valid complaint, Livingston shall be authorised to execute the agreement again or to alleviate the complaint in any manner. In the event Livingston shall not be liable for any loss suffered by Client as a result of the complaint(s), save in the event of wilful intent or gross negligence on the part of Livingston.
- 9.3 Complaints concerning Livingston's execution of the agreement shall never entitle Client to suspend his financial obligations vis-à-vis Livingston.
- 10. Liability, Protection, Indemnification**
- 10.1 Livingston shall not be liable for any loss suffered or to be suffered by Client (or others), irrespective the nature and extent thereof, in connection with or arising from the execution of an agreement, including damage to property belonging to Client or others and consequential loss or loss of business revenue, unless the loss or damage has resulted from wilful intent or gross negligence on the part of Livingston.
- 10.2 If and to the extent that Livingston could be liable vis-à-vis Client, the total liability of Livingston, irrespective the grounds thereof, shall be limited to compensation by Livingston of the direct loss or damage, up to a maximum equal to the contract price for the agreed performance (not including VAT). If the agreement is (principally) a term agreement with a duration of more than one year, the maximum sum referred to above shall be set at the total amount of payments due in one calendar year (excl. VAT.) The total amount payable in compensation for direct loss shall never be able to exceed the insured sum under Livingston's professional indemnity insurance, and shall never be able to exceed € 450,000 (four hundred and fifty thousand euros) per event.
- 10.3 Direct loss or damage, in the meaning of this article, shall be understood to include:
- (a) all costs reasonably incurred by Client in order to bring the performance of Livingston in line with the standards specified in the agreement;
- (b) all costs reasonably incurred in order to appraise the cause and extent of the loss/damage, in as much as the appraisal relates to direct loss or damage in the meaning of this article;
- (c) all costs reasonably incurred in order to prevent loss or damage, in as much as Client can demonstrate that the costs incurred contributed to containing direct loss or damage in the meaning of this article.
- 10.4 Liability on the part of Livingston for indirect loss including consequential loss, loss of profit, cost savings not realised, loss due to stagnation of business operations, or any other loss other than as referred to in article 10.2-10.3 above, shall be explicitly excluded.
- 10.5 Livingston shall not be liable for any loss or damage suffered by Client or others, irrespective nature or cause thereof, due to incorrect and/or inexperienced use by Client or others of the goods or products delivered or made available by Livingston or due to work and / or services performed by Livingston.
- 10.6 Livingston shall not be liable for any loss or damage due to conduct or negligence on the part of another party, authorised by Client to supply material or perform work and / or services.
- 10.7 Client shall protect and hold Livingston harmless against any liability claimed by others concerning goods supplied/rented by Livingston or work and/or services performed by Livingston, unless it can be lawfully substantiated that the liability stems from gross negligence on the part of Livingston and provided Client can demonstrate that he carries no blame in the matter howsoever.
- 10.8 Other than in cases as referred to in this article, Livingston shall never be able to be held liable for compensation or damages, irrespective the grounds on which such procedure might be based.
- 10.9 Client shall only be able to invoke the consequences of an attributable shortcoming on Livingston's part in the fulfilment of its obligations under the agreement after Client has properly served written notice of default to Livingston and Livingston has failed to respond within the reasonable period of compliance stated therein. Notice of default must state as detailed as possible a description of the shortcoming so as to enable Livingston to respond adequately.
- 10.10 Any right of compensation shall be conditional to Client's immediate reporting of the damage, which must in any case have taken place within three days after the damage was established.
- 10.11 A series of related and coherent events causing damage shall, for the purpose of this article, be considered as a single event.
- 11. Description, drawings and illustrations, intellectual property**
- 11.1 Descriptions (including illustrations and drawings) of goods, such as the specifications and particulars provided by Livingston, shall only be taken as a general description of the goods, hence Client shall never be able to derive any rights from them.
- 11.2 All illustrations, drawings, schedules, and stocklists or any other documentation provided to Client shall remain the property of Livingston and shall not be permitted, without Livingston's prior written consent, to be partly or wholly reproduced or publicised by Client or made known to others by way of print, photocopy, microfilm, or in any manner howsoever.
- 11.3 Unless explicitly agreed otherwise, an agreement concluded with Client shall never constitute a transfer of intellectual or industrial property rights coming to Livingston (or its ancillary suppliers). Client shall under no circumstance be authorised to sell, encumber, copy, multiply, publicise or otherwise use or commercially exploit the rights and products referred to in this article, or to allow same to be used or commercially exploited by others or to make same available to others in any manner howsoever, whether or not against payment or for other reward.
- 11.4 If an offer of Livingston does not lead to an agreement, the offer, including designs, illustrations and drawings, as well as all other documentation provided by Livingston [as part of the offer] shall be returned to Livingston upon its first request.
- 11.5 Livingston shall not be liable for any claim put forward by any other party for infringement of copyright, patent right, brand or trademark right, model right, or any other intellectual or industrial property right, however named, in connection with products delivered or work performed by Livingston, in as much as Livingston could be assumed to have infringed on those rights by making use of information, written documentation or objects made available to it by or on behalf of Client in support of the execution of the order. Client shall protect and hold Livingston harmless against any such liabilities and/or claims.
- 12. Joint and several liability**
- If Client represents multiple (legal) persons or enterprises, each of those (legal) persons and / or enterprises shall be jointly and severally liable for fulfilling all obligations resting with Client pursuant to these general terms and conditions.
- 13. Applicable law and settlement of dispute**
- 13.1 All agreements concluded with Livingston and all differences arising from or in connection with an agreement between Livingston and Client shall be exclusively governed by Dutch law.
- 13.2 Every agreement concluded with Livingston and any dispute arising from or in connection with an agreement between Livingston and Client shall in the first instance be submitted solely to the competent Court at Utrecht, unless the law stipulates otherwise.
- II RENT / USE OF EQUIPMENT**
- 14. Duration of the agreement, termination**
- 14.1 Livingston shall rent to Client the Equipment for the initial period stipulated in the agreement. If Livingston or Client wishes to cancel the rental agreement at the end of this initial period, the party terminating shall be obliged to give notice of termination to the other party in writing, subject to the notice periods stipulated in article 14.2 hereunder, effective as per the last day of the agreed initial period. Unless termination takes place in the said manner, the rental agreement shall be renewed for a period equal to the initial period,

- against the price originally agreed and under equal terms, as shall be the case with each subsequent renewal.
- 14.2 Livingston and Client shall, with reference to termination of the rental agreement as stipulated in article 14.1 hereabove, observe the following notice periods:
- |                           |                   |
|---------------------------|-------------------|
| Agreed initial period:    | Notice:           |
| less than three months    | two days          |
| three to twelve months    | seven days        |
| longer than twelve months | twenty-eight days |
- 14.3 In the case that Client cancels the rental agreement before the Equipment has been made available to him, Client shall owe Livingston: all so-called pre-configuration costs; an amount equal to 25% of the total rent agreed as fixed compensation, undiminished Livingston's right to demand full compensation if the total loss suffered is in excess thereof; an amount of € 25,00 to cover administration costs.
- 15 Rent**
- 15.1 The rent specified in the rental agreement is the rent owed by Client for each rental period agreed upon, excluding sales tax, unless other terms have been explicitly agreed upon. Livingston emphatically reserves the right to pass on to Client all cost-increasing factors (such as insurance and maintenance costs and taxes) and to charge these to Client by adjusting the rent in the interim. In case the Equipment has not been used by Client, for whatever reason, this shall have no bearing on the financial obligations of Client vis-à-vis Livingston.
- 15.2 The rent shall be due and payable within fourteen days after receipt of the relevant invoice from Livingston.
- 16. Delivery, installation and provision of the Equipment**
- 16.1 Unless otherwise agreed, Livingston shall deliver the Equipment to Client at the location advised by Client for the purpose. Client shall enable Livingston to deliver the Equipment and shall make any provisions as are necessary to enable Livingston to fulfil its obligations concerning delivery and installation of the Equipment.
- 16.2 All costs of transport, delivery and installation shall be for Client's account and shall be charged by Livingston to Client together with the first rent.
- 16.3 Client shall be obliged to allocate a safe and suitable place for installation to Livingston, compliant with Livingston's installation requirements. Client shall be obliged to ensure that the place of installation is ready and available at the date and time of installation agreed with Livingston. Where required Client shall provide, for his own account, electrical connections and any other provisions required for installation. Client is obliged, within the framework of the delivery and installation of the Equipment, to secure his computer (data) files, whether by making backup copies or by any other manner, so as to prevent computer (data) files from being damaged or lost. Livingston shall never be liable for loss of, or damage to computer (data) files.
- 16.4 After installation Livingston shall subject the Equipment to a standard test in accordance with the testing standards adhered to by Livingston. If the standard test is successful, Client shall be deemed to have accepted and approved the Equipment, unless he informs Livingston in writing, within forty-eight hours after the standard test was carried out by Livingston, of any defects within or on the Equipment.
- 17. Use of the Equipment**
- 17.1 Client shall use the Equipment in good faith and with all due care, in accordance with the purpose of the Equipment and compliant with its instructions of use. Client declares to be conversant with the operation of the Equipment and undertakes to instruct all users of the Equipment accordingly. Client, furthermore, shall use the Equipment only at locations that are suitable for the storage and/or use of the Equipment, in accordance with generally applicable guidelines, or, where relevant, in accordance with the specific guidelines of the supplier of the Equipment (temperature, air humidity, ventilation, damage risk, etc.), and in a location that is safe and in which the Equipment is guarded against unauthorised use, damage and or theft.
- 17.2 Client shall not be permitted, without prior permission in writing from Livingston;
- (a) to connect or to have connected to the Equipment, any additional accessories, technical aids or other appliances, whether or not the property of Client's, and/or to impart any changes of whatever nature in the Equipment installed by Livingston in any manner howsoever, or to attach or mount or adhere the Equipment in any manner to fixed property, or to encase the Equipment or to otherwise attach it in a manner that requires it to be permanently modified;
- (b) to sub-rent the Equipment in part or in whole to others and/or to make the Equipment otherwise available (for use), in part or in whole, to a third party;
- (c) to use the Equipment for any purpose other than the agreed purposes.
- 18. Maintenance of the Equipment, helpdesk Service**
- 18.1 Client shall be obliged, for his own account, to keep the Equipment in good condition of maintenance and operationally ready, and to strictly comply with the warranty conditions stipulated by the supplier of the Equipment, and to have all necessary repairs and maintenance work carried out by suitably qualified experts. Client, furthermore, shall be obliged, for his own account, and for as long as the Agreement is in effect, on behalf of the Equipment to conclude a maintenance contract with the supplier of the Equipment and/or with Livingston. Client shall allow Livingston upon first request to sight the relevant maintenance contract and shall in any case strictly adhere to all instructions provided by the supplier or by Livingston concerning the maintenance of the Equipment.
- 18.2 If Client has a maintenance or service agreement with Livingston for the Equipment, then Client shall be entitled to make use of the helpdesk service of Livingston (contactable during office hours, except on bank holidays). The helpdesk service shall be operated by Livingston in conjunction with the manufacturer of the Equipment.
- 18.3 In the event of damage to the Equipment, irrespective its cause, Client shall be obliged to inform Livingston without delay and to strictly follow the instructions issued by Livingston concerning the damage.
- 18.4 The Equipment is insured against fire, theft (only in demonstrable cases of breaking and entering) and water damage. The insurance coverage extends to the Benelux countries, Germany, France, Spain and the United Kingdom. Coverage is subject to an excess of € 2,500 per claim. In the event of damage to equipment, that stipulated in Article 19.2 hereunder shall apply, on the understanding that any insurance benefit payable shall be deducted from the amount owed by Client to Livingston. Livingston shall be authorised to pass on the excess of € 2,500 to Client in full.
- 19. Returned Equipment**
- 19.1 If and when the Equipment is to be returned, the Equipment must be returned to Livingston in good operational condition, complete, and in the original packaging.
- 19.2 If it appears, upon return of the Equipment or sooner, that the Equipment or any part(s) thereof has or have been damaged, or if parts of it are missing, Livingston shall charge the repair or replacement value of the damaged or missing parts to Client. Payment of the repair and / or replacement value shall be due within fourteen days after Livingston's receipt of the relevant specification in writing.
- 20. Inspection of the Equipment**
- 20.1 Client shall at all times allow Livingston or a third party appointed by Livingston to access the location(s) where the Equipment is installed, during office hours, in order to enable Livingston or said third party to inspect the Equipment.
- 20.2 Client shall, in cases as referred to in article 7.2 afore, for his own account, take all measures as are necessary in order to safeguard the rights of Livingston with respect to the Equipment. Especially, Client shall inform others, liable to assert certain rights with respect to the Equipment, or otherwise liable to jeopardise Client's or Livingston's unencumbered rights to dispose freely of the Equipment in any manner whatsoever, of the existence of the agreement between Client and Livingston and of the (ownership) rights of Livingston in regard to the Equipment .
- 20.3 If Client fall short in meeting his obligations as referred to in article 20.2 above, Livingston shall be authorised, without prior negotiations with Client, and for Client's account, to take any such measures as deemed necessary by Livingston in order to safeguard its rights with respect to the Equipment .
- 21. Early termination of rental agreement**
- 21.1 In the event of early termination of an agreement due to any of the events referred to in article 7 hereabove, the remaining rent instalments at the time of termination shall be due and payable in full and immediately. In addition Livingston shall reserve all its rights with respect to the recovery, from Client, of all costs incurred and/or loss suffered on account of the early termination.
- 21.2 In the event of early termination of an agreement, Livingston shall be authorised to demand Client to immediately surrender the Equipment as Client hereby authorises Livingston irrevocably and unconditionally to access the location(s) where the Equipment is located, in order to enable Livingston to regain possession of the Equipment.
- 21.3 Undiminished that stipulated in article 21.2 above, Client shall be obliged, upon termination of the agreement, and for his own account, to return the Equipment in sound condition to Livingston or to any third party designated by Livingston. In the event, any shipping costs are for Client's account.
- 22. Transfer of rights under the rental agreement**
- 22.1 Client shall not be authorised, without prior written approval from Livingston, neither to alienate, sell and/or transfer his rights under the agreement to another party, nor to enter into any agreement with another party that commits him to performing any legal action as referred to above.
- 22.2 Livingston shall be authorised to sell, alienate, or transfer its rights with respect to the agreement, the Equipment, and any other rights coming to it in regard to the Equipment, to another party, either wholly or in part, or to pledge those rights as security. In the event of a transfer of rights with respect to the agreement and/or the equipment, the person or party obtaining those rights shall be able to exercise all rights of Livingston under the agreement vis-à-vis Client. Client undertakes to lend every cooperation required by Livingston on behalf of the alienation and/or pledging of rights with respect to the agreement or the Equipment, as equally Client shall recognise the rights coming to the party to which those rights are transferred or pledged, and furthermore shall fulfil all his obligations vis-à-vis said party as if that party were the party renting. Notwithstanding Livingston's transfer and/or pledging of rights under the rental agreement or concerning the Equipment to another party, Client shall only be able to address Livingston concerning his own obligations under the rental agreement.
- 23. Software Licences**
- 23.1 If the renting of the Equipment is coupled to the provision to Client of a licence for the use of the software (whether or not installed on the Equipment), Client shall be obliged strictly to adhere to the conditions for use of the software as these are applied, respectively, by the party entitled to the rights on the software or the licensor.
- 23.2 Should Client at any time purchase the Equipment from Livingston and thus acquire ownership thereof, Client's right to use the software (whether or not installed on the Equipment) made available by Livingston to Client,

shall expire. In the event, Client shall be obliged to conclude a (new) licence agreement with the licensor in question (whether or not through mediation of Livingston).

### III SALE AND DELIVERY OF EQUIPMENT AND / OR OTHER MOVABLE PROPERTY / PERFORMANCE OF SERVICES

#### 24. Prices

- 24.1 Unless explicitly stated otherwise all prices publicised by Livingston in catalogues, pricelists or advertisements are quoted net and exclusive of sales tax (BTW). The prices of Livingston apply for the performance as described in the offer or scope of agreed delivery. The cost of additional or exceptional deliveries or performance is charged separately.
- 24.2 All prices agreed are based on delivery ex warehouse of Livingston. Costs of transport, forwarding, assembly and/or installation are not included in the price and shall be charged separately.
- 24.3 Livingston is entitled to pass on to Client all cost-increasing factors, such as increased cost prices and tariffs payable for materials, wages, social security contributions, taxes, shipping costs, (factory) prices of ancillary suppliers, as well as currency exchange variances, arising after an offer has been presented or an agreement established.
- 24.4 Client shall be entitled, within three days after having been informed of a price increase, to declare the agreement terminated by way of a written statement, in the absence of which the price increase shall be deemed to have been accepted and approved by Client.

#### 25. Delivery and delivery dates, performance of services

- 25.1 Delivery in principle shall be non-carriage paid. Livingston shall determine the choice of transport for delivery of the goods. The actual delivery shall be at a place, closest to Client's place of work or storage area, that enables safe access and leaving of the transport vehicle via a route suitable to carry the vehicle.
- 25.2 Client is obliged to ensure that the goods are unloaded as soon as possible after arrival of the transport vehicle. In doing so Client shall observe normal unloading times and shall deploy sufficient qualified personnel and equipment. Client shall, during unloading, follow strictly the instructions provided by Livingston (or of the carrier engaged by Livingston).
- 25.3 Upon delivery, Client shall ensure that any visible flaws or damage are noted down on the delivery docket or carrier's waybill, or shall have the carrier draw up a formal report of the flaws or damage detected. If the goods are delivered to a third party taking charge of the goods on behalf of Client, Client shall be obliged to have the inspection referred to in this article carried out within 24 hours after the goods have been received on his behalf.
- 25.4 In the case of delivery ex warehouse or factory, Client shall be obliged to inspect the goods immediately after delivery in order to ascertain that the delivery meets the agreed specifications, especially regarding the particulars of the goods, the quantity of the goods, and the agreed quality requirements.
- 25.5 In the case of a complaint, Client shall be obliged to report any such in writing

to Livingston within three days after the inspection referred to in article 25 (3-4) hereabove was carried out, failing which Client shall be deemed to have received the goods in good order and free of any defects.

- 25.6 Client shall be obliged, at Livingston's first request, to specify accurately when and where – within the Netherlands – the goods to be delivered or services to be performed by Livingston are to be delivered or performed, as the case may be. Client shall be obliged to furnish all information as required by Livingston in connection with the forwarding of the goods or the performance of the work.

#### 26. Warranty

- 26.1 Unless otherwise agreed, Livingston shall furnish Client with a warranty on the delivered goods for a period of thirty (30) days, commencing as of the date of delivery, without prejudice to that stated in article 10 of these general terms and conditions with respect to liability of Livingston.
- 26.2 Every claim under warranty shall expire if Client, without prior permission in writing from Livingston, performs changes or repairs on the goods or has had any such performed by others, or if the goods have been used for other than the agreed purposes or have been otherwise inexpertly used or maintained by Client.
- 26.3 Concerning goods obtained by Livingston from others or services and/or work performed by others under instruction of Livingston, Livingston shall never be required to provide more extensive warranty conditions than those, which Livingston has obtained from the other party.
- 26.4 The warranty shall be limited to repair or replacement of parts, free of charge, to be decided at the discretion of Livingston. Livingston shall be authorised to have repairs and / or replacements performed by a qualified party, appointed by Livingston.
- 26.5 The warranty shall apply exclusively for Client only and shall apply solely to defects caused by faulty manufacturing, construction or material. The warranty shall not apply in cases of normal wear and tear, or damage due to accidents or if changes have been made to the material or the construction by Client or by another party, or if the damage has been caused by negligence or inexpert handling, or in cases where the cause of the defect cannot be established unequivocally. Livingston shall reserve the right, in performing any work under warranty, to modify the goods that are being repaired.

#### 27. Ownership clause

- 27.1 Livingston reserves the ownership of all goods delivered to Client for as long as Client has not paid up all that what is owed by him to Livingston under any agreement for the delivery of goods or the performance of services, including any receivables owed to Livingston due to Client's failure to meet his obligations under any agreement with Livingston.
- 27.2 For as long as Client is not the owner of the goods delivered by Livingston, Client shall not be authorised, without prior permission in writing from Livingston, to sell, encumber, or otherwise dispose of the goods, outside the course of Client's normal business operations.