

# General Terms and Conditions - Contract for Work and Services ("GTC-WS")

the  
**OMNINET Nederland**  
President Kennedylaan 19  
2517 JK Den Haag  
Netherlands

hereafter referred to as the "**Company**".

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## § 1 Scope of application

- § 1.1 These General Terms and Conditions - Contract for Work and Services ("**GTC-WS**") apply to all contracts for work performances and work delivery services concluded between the Company and their contractual partner.
- § 1.2 The scope of the GTC-WS is limited to the B2B area and is applicable to contracts with customers only to the extent that the GTC-WS can be used for the interpretation of the respective individual contract within the framework of the statutory provisions.
- § 1.3 Unless otherwise stated, references in this contract always refer to GTC-WS.
- § 1.4 In addition, the General Terms and Conditions of the Company general part ("**GTC-GP**") as well as the respective relevant GTC shall apply.

## § 2 Subject matter of contract, scope of services

- § 2.1 The Company provides work and services exclusively in accordance with the terms and conditions agreed in the contract and hereinafter against the contractually agreed remuneration.
- § 2.2 The Company shall bear the responsibility for success only to the extent that
- all criteria relevant for the performance of the service were specifically and conclusively defined in the service specification at the time of conclusion of the contract, in particular with regard to scope and

effect, and these have become the subject matter of the contract ("agreed performance criteria") and  
b) the customer fulfils its obligations to cooperate in a timely and proper manner.

If one of the prerequisites according to a) or b) is not fulfilled, the Company shall not owe any success.

This shall not apply insofar as an untimely or improper cooperation pursuant to § 2.2 b) has no effect on the performance of the service.

§ 2.3 The service description is based on the technical and functional requirements of the contractual partner as communicated by the contractual partner. In particular, the performance specification conclusively reflects the agreed performance criteria pursuant to § 2.2 a) and any test criteria to be applied for this purpose. Changes to the service description shall only be made in accordance with § 5.

§ 2.4 The Company shall provide any analysis, planning and consulting services for the service specification only based on a separate contract.

§ 2.5 Unless already agreed in the service description, the parties shall agree (in good time before the agreed start of the service provision, as a rule no later than two weeks after signing the contract) on test means to be used for verification as well as on any test cases based on the agreed performance criteria.

§ 2.6 Insofar as the test means/test cases have not been agreed in due time, the Company may for its part define suitable test means/test cases in a binding manner in accordance with practice. The interests of the contracting party shall be taken into account appropriately.

### § 3 Cooperation between the contractual partners

§ 3.1 The contact persons pursuant to § 1.4 in conjunction with § 2.1 of the GTC-GP shall immediately take decisions in connection with the execution of the contract and shall be available for any necessary information.

§ 3.2 The decisions of the contact persons shall be documented.

### § 4 Duty to cooperate

§ 4.1 The customer shall hand over the test means defined in accordance with § 2.5 in due time and in proper form. If the customer is in default with the handing over, e.g. due to a reminder, the Company shall be entitled to prepare or procure suitable test means at the expense of the contracting party (cf. § 2.6).

§ 4.2 The customer shall report defects in particular in accordance with § 2.4 of the GTC-GP. Unless otherwise agreed, the relevant forms and procedures of the Company shall be used for this purpose.

§ 4.3 Reports of any defects that are not easily comprehensible for an uninvolved third party or the Company shall not be deemed defect reports.

### § 5 Procedure for changes in services

§ 5.1 Both contracting parties may propose changes to the service description in accordance with § 2.3 and the provision of services ("**change proposal**"). The following procedure is agreed for this purpose:

§ 5.2 The Company shall review a change proposal of the contracting party and inform the contracting party whether a comprehensive review of this change proposal is necessary or not.

§ 5.2.1 If an extensive examination of the change proposal is necessary, the Company shall inform the contractual partner within a reasonable time span of the expected period of time required for this and the remuneration to be spent by the contractual partner for this. In the meantime, the Company shall continue to perform the work based on the existing service agreement, unless the parties have explicitly agreed in writing that the work shall be suspended. Any additional costs arising from this shall be borne by the contractual partner.

§ 5.2.2 If an extensive examination of the change proposal is not necessary or if the commissioned examination has been completed, the Company shall either

- a) notify that the proposed modification is not achievable for the Company with reasonable effort within the scope of the agreed services or
- b) submit a written offer for the implementation of the changes ("**change offer**"). The change offer shall contain in particular the changes to the performance specification and their effects on the performance period, the planned dates, the test resources and the remuneration.

§ 5.3 The customer shall either reject a change offer within the acceptance period ("**binding period**") specified therein or declare acceptance in writing or in another agreed form.

§ 5.4 Until the acceptance of the change offer, the work shall be continued based on the previous contractual agreements. Any additional costs incurred as a result shall be borne by the contracting party.

§ 5.5 The Company and the customer may agree that services affected by a change proposal shall be interrupted until the end of the review or, if a change offer is submitted, until the expiry of the binding period.

§ 5.6 If schedules are postponed due to a change proposal of the contractual partner or an agreed rest period pursuant to §§ 5.2.1 sentence 2, 5.5, the performance periods to be complied with by the Company shall be extended at least by the number of calendar days on which the work was interrupted in this connection. Insofar as the Company's time schedules are affected thereby, the performance periods shall be extended insofar as the Company is able to integrate the performances to be rendered into its time schedules.

- § 5.7 The Company may demand reasonable remuneration for the duration of an interruption, except to the extent that the Company has otherwise deployed or maliciously omitted to deploy its employees affected by the interruption.
- § 5.8 The change procedure shall be documented in writing or in text form on a template of the Company upon the Company's request, unless otherwise agreed. Any amendment of the service description shall be agreed in writing or in another form agreed between the contracting parties.
- § 5.9 § 5.2 to § 5.8 shall apply accordingly to the Company's proposals for amendments.
- § 5.10 proposals are to be addressed to the contact person according to § 3.1 of the contracting party.

## **§ 6 Rights of use**

- § 6.1 The Company grants the contracting party the non-exclusive and in principle non-transferable right to use the performance results which the Company has rendered within the scope of the contract and handed over to the contracting party for its own internal purposes within the scope of the contractually presupposed purpose of use, unless otherwise agreed. The right of use granted to the contractual partner in respect of the services provided by the Company may only be transferred to third parties by the contractual partner subject to a complete relinquishment of their own rights.
- § 6.2 Apart from that, all rights shall remain with the Company. In particular, the Company is expressly entitled to use work results generated from the performance of the Company as a starting point for the development and advancement of the Company's product portfolio. Claims against the Company do not arise from this. This ensures that the contractual partner receives their services from the Company at an appropriate price. The Company undertakes to ensure that no individual data of the contractual partner are disclosed to third parties.
- § 6.3 If the contracting party intends a complete transfer of rights pursuant to § 6.1, the Company shall be informed thereof at least thirty (30) days in advance and given the opportunity to object to the transfer. The Company shall only object to the extent that important interests of the Company are affected by the transfer, whereby the Company shall give due consideration to the interests of the contracting party. This is particularly conceivable if the transfer entails the risk that competitors gain access to important and confidential information. If the Company objects to such a transfer, it undertakes to pay reasonable compensation for the damages incurred.
- § 6.4 In case of a transfer of business of any kind at the contracting party or if a third party acquires a blocking minority ("Change-of-Control") at the contracting party, the Company shall be informed thereof without undue delay. In this case, the Company has the right to terminate the contract and to object to the further use of its performance results. The Company shall only object insofar as important interests of the Company are affected by the transfer, whereby the Company shall take the interests of the contracting party into account appropriately. This is particularly conceivable if the change of control entails the risk that competitors gain access to important and confidential information. If the Company objects, it undertakes to pay reasonable compensation for the resulting damage.
- § 6.5 The Company shall be entitled to take reasonable technical measures to protect against non-contractual use. The contractual use of the services may not be significantly impaired thereby.
- § 6.6 The Company may revoke the contracting party's right of use if the contracting party does not insignificantly violate restrictions of use or other regulations for the protection against unauthorized use. The Company has to grant the contracting party a grace period for remedy before. In case of repetition and in case of special circumstances that justify the immediate revocation under consideration of the interests of both parties, the Company may also pronounce the revocation without setting a time limit. The customer shall confirm to the Company in writing the discontinuation of the use after the revocation.

## **§ 7 Acceptance**

- § 7.1 Customer shall declare acceptance to the Company within fourteen (14) calendar days after receipt of the written acceptance request, unless another period has been agreed. During this inspection period the customer can convince himself, if necessary by means of the test equipment according to § 2.5, that the work performances are in accordance with the contract.
- § 7.2 Insofar as work performances are concerned, the request for acceptance shall be deemed to be the handover of the work produced by the Company.
- § 7.3 Unless otherwise agreed, a notified defect shall be assigned to one of the following categories:
- **Category 1**  
The work performance is afflicted with a defect that makes usability impossible or only permits it with serious restrictions.
  - **Category 2**  
The work performance is afflicted with a defect that restricts the usability without a category 1 defect being present.

- **Category 3**

The work performance is afflicted with a defect that only insignificantly restricts the usability.

- § 7.4 In the event of a category 1 defect, the customer may refuse the declaration of acceptance. This shall also apply if several defects of category 2 together lead to effects of category 1. The Company shall remedy properly reported defects according to § 4.2 with effects of category 1 within a reasonable period at least in such a way that no effects of category 1 are present any more. Insofar as the tests could not be continued properly due to such a defect, its effects or its elimination, the test period for the work performances affected by it shall be extended appropriately.
- § 7.5 Partial acceptances already declared shall remain unaffected by subsequent acceptance tests for other services. The same applies to tests already carried out, except insofar as these are affected by a defect or its elimination.
- § 7.6 If there are no category 1 defects, the service shall be deemed ready for acceptance. The customer shall declare acceptance immediately after completion of any tests, but at the latest after expiry of the test period in accordance with § 7.1. § 8.1.
- § 7.7 The work performances shall be deemed accepted, even without an express declaration and without a request for acceptance by the Company.
- a) if the customer puts the work into use for purposes other than testing, or
  - b) with payment, unless the customer has justifiably refused acceptance, or
  - c) if the customer does not give notice of any defects within the inspection period pursuant to § 7.1 which prevent acceptance, or
  - d) if the customer does not give notice of defects within a reasonable period of time set by the Company for this purpose which prevent the acceptance and the Company has pointed out this consequence, or
  - e) if, when using the test equipment according to §§ cf. 2.3, § 4.1, the tests can be carried out without defects that prevent acceptance.
- § 7.8 Unless otherwise agreed, definable partial performances shall also be accepted individually in accordance with these rules.

## **§ 8 Claims for defects of the contractual partner**

- § 8.1 Contractual partners of the Company must give notice of defects immediately, regardless of the type of contract.
- § 8.2 The contracting party shall only have claims for defects if reported defects are reproducible or otherwise demonstrable. This also applies to defects for which rights are reserved at the time of acceptance. For the notification of defects, § 4.2 shall apply in particular.
- § 8.3 If the contractual partner is entitled to claims for defects, they shall initially only have the right to subsequent performance within a reasonable period of grace. The supplementary performance includes, at the Company's option, either removal of the defect or new production.
- § 8.4 If the subsequent performance fails or cannot be carried out for other reasons, § 6 GTC-GP shall apply. The customer may only be entitled to a cost-incurring self-performance if a defect has not been remedied despite the expiry of a reasonable period of time for subsequent performance and the cause for this lies in the sphere of the Company.
- § 8.5 If the subsequent performance is delayed, § 6 of the GTC-GP shall apply in particular to damages and reimbursement of expenses of the Company.
- § 8.6 If the customer has a right of choice, they shall exercise this right within a reasonable period of time, but at the latest within fourteen (14) calendar days.
- § 8.7 For material defects, reference is again expressly made to the supplementary provisions of § 4 of the GTC-GP, and for defects of title § 5 of the GTC-GP.