

## **1 General Terms and Conditions, offer, proposal, quotation and agreement**

- 1.1 These General Terms and Conditions are available in Dutch, French and English. In the case of contradiction between the Dutch and the English text, only the Dutch text is binding. In the case of contradiction between the French and the English text, only the French text is binding. In the case of contradiction between the Dutch and the French text, only the text of the language of the agreement, or failing that, of the quotation or of the proposal is binding.
- 1.2 In these General Terms and Conditions, 'ACA' means all companies belonging to the group consisting of: ACA HOLDING NV, with registered office at Herkenrodesingel 8B/2.01, 3500 Hasselt, with CBE number 0882.194.313; ACA IT-SOLUTIONS NV, with registered office at Herkenrodesingel 8B/2.01, 3500 Hasselt, with CBE number 0439.340.516; IT MATCH BV, with registered office at Herkenrodesingel 8B/2.01, 3500 Hasselt, with CBE number 0882.352.778; ACA Object Solutions BV, with registered office at Herkenrodesingel 8B/2.01, 3500 Hasselt, with CBE number 0471.597.172; FLOW PILOTS, with registered office at 2060 Antwerpen, Franklin Rooseveltplaats 12, bus 14 with CBE number 842.238.033; as well as any other company affiliated with ACA NV or ACA Object Solutions BV that makes use of these General Terms and Conditions.
- 1.3 These General Terms and Conditions apply to all offers, proposals, quotations and agreements made by ACA for goods and/or services of any kind. Deviations from these General Terms and Conditions are only binding for ACA if expressly accepted in writing by ACA.
- 1.4 All offers, proposals and quotations are free of obligation, unless the offer, proposal or quotation expressly states otherwise in writing. The Customer guarantees the accuracy and completeness of the information provided to ACA by or on behalf of itself, upon which ACA has based its offer. Only written confirmation (e-mail is allowed) by ACA counts as acceptance of the order and conclusion of the agreement.
- 1.5 The Customer agrees that its own purchase conditions do not apply to the agreement with ACA.
- 1.6 If any provision of these General Terms and Conditions is wholly or partially invalid or revoked, the remaining provisions of these General Terms and Conditions will remain in full force.

## **2 Price and payment**

- 2.1 All prices are exclusive of Value Added Tax (VAT) and other levies imposed by the government.
- 2.2 All prices are excluding travel expenses. Unless otherwise agreed, travel expenses for interventions will be charged by ACA as follows:
  - intervention <= 4 h: 2 trips
  - intervention > 4 h and < 8 h: 1 trip
  - intervention >= 8 h: no travelBy interventions is understood: any intervention carried out by ACA at the request of the Customer, for example following software and/or hardware problems, for attending meetings and/or steering committees, etc.
- 2.3 By travel expenses is understood: the hourly rate multiplied by the time required to travel to the final destination using the route planner via the quickest route from headquarters.
- 2.4 ACA is entitled to adjust its prices and rates yearly on the anniversary of the start of the services, according to the increase in labour costs and in accordance with the following formula:
$$P1 = P0 \times (0.2 + 0.8 \times X1/X0)$$
Where:
  - P1 = the indexed amount year n
  - P0 = the base amount n-1
  - X1 = the labour costs in year n
  - X0 = the labour costs in year n-1
- 2.5 Payments are made in euro by bank transfer to the bank account whose number is specified on the invoice of ACA, mentioning the required references.
- 2.6 All invoices will be paid by the Customer within thirty days after the invoice date, unless otherwise agreed in writing.
- 2.7 The Customer is not entitled to apply a set-off on amounts ACA would owe the Customer.

- 2.8 In case of non-payment of invoices by their due date, default interest of 1% per month will be owed, automatically and without prior notice, on the outstanding balance of the invoices, plus fixed compensation of 10% of the outstanding balance with a minimum of 95 euro per invoice, from the due date of the invoice until full payment, with each month started counting as a full month. In the event of late payment, all amounts due become payable immediately, automatically and without prior notice, regardless of the agreed payment terms.
- 2.9 In the event of payment arrears on the part of the Customer, even partial, of more than thirty (30) calendar days, ACA reserves the right to terminate or suspend the agreement between the parties in accordance with articles 10.2 and 10.4, without prejudice to the right to demand payment of all amounts owed by the Customer, including the various costs incurred due to late payment, and without prejudice to any other rights of ACA under the agreement and/or applicable law.
- 2.10 If the solvency of the Customer shows a negative trend, such as the non-payment of invoices, ACA has the right to payment in advance or a suitable guarantee (at the discretion of ACA) for continuing to execute contractual services, failing which ACA is entitled to terminate the agreement in accordance with article 10.2.
- 2.11 The lack of written protest of an invoice within 7 working days of its sending means the irrevocable acceptance of the invoice and the amounts, products and services referred to therein.
- 2.12 When ACA purchases licenses at the customer's request, ACA reserves the right to correct its prices if ACA determines that there is a difference of more than or equal to 3% in the dollar exchange rate between the time of posting the order by ACA and the signing of the order by the customer. If the customer does not agree with this, ACA IT-Solutions reserves the right to cancel the order.

### **3 Confidential information; Non-recruitment**

- 3.1 All information provided by one party to the other party that is expressly designated as confidential or should reasonably be considered confidential, in whatever form this information is delivered or communicated (oral, written and/or electronic), including in any case all ACA Products made available to the Customer under article 7.1, shall be considered Confidential Information. The party receiving Confidential Information (further: "Receiving Party") shall only use this information for the purpose for which it was provided.
- 3.2 Regarding Confidential Information, the Receiving Party in particular shall
- (i) use such only to meet its obligations under the agreement;
  - (ii) store it with at least the same degree of care it uses to store its own Confidential Information, and in no event less than a reasonable level of care; and
  - (iii) not disclose it to any third party.
- The above obligations may only be waived if the Receiving Party has received written consent for this from the Party that submitted or communicated its Confidential Information to the other Party (further: "Disclosing Party").
- 3.3 The obligations of confidentiality stipulated in this article 3 do not apply to Confidential Information that:
- (i) is publicly known other than by a breach by the Receiving Party of its obligations under the Agreement;
  - (ii) was communicated by a third party to the Receiving Party as non-confidential and for which the Receiving Party was of the opinion that, in the absence of an obligation in favour of the other Party, it was not unlawful to disclose the information;
  - (iii) was developed by the Receiving Party independently of the Disclosing Party, or that the Receiving Party was already aware of before this information was communicated by the Disclosing Party; and/or
  - (iv) was disclosed with the written consent of the Disclosing Party.
- 3.4 If the Receiving Party must communicate Confidential Information on the orders of a competent court and/or administrative or government agency or on the basis of a law, regulation or any other

administrative or legal proceedings, it will inform and consult with the Disclosing Party about this in advance.

- 3.5 Notwithstanding the provisions of this article, the Receiving Party may communicate the Confidential Information of the Disclosing Party to its employees, consultants and suppliers who are directly involved with and/or must be informed of such Confidential Information for implementation of the agreement.
- 3.6 If the Receiving Party no longer needs the Confidential Information for fulfilment of its obligations under the agreement or if the agreement is terminated, the Receiving Party undertakes to return or destroy the Confidential Information (along with each copy and summary thereof) to the Disclosing Party, at the discretion of the Disclosing Party. However, ACA will be entitled to retain a copy of the project documentation after expiry of the Agreement for reasons related to archiving or quality control.
- 3.7 During the term of the agreement and for one year following termination thereof, without the written consent of ACA, the Customer shall not in any way hire employees of ACA who were involved in execution of the agreement, either directly or indirectly (with companies in which the Customer has direct or indirect interests), or in any way allow them to work for it or approach them do so or recommend them to third parties for employment.
- 3.8 If this prohibition is violated by the Customer, the Customer will owe fixed damage compensation to ACA (among others for recruitment and selection costs, training costs, damages resulting from the non-fulfilment of the plan established for the employee in question ...) equal to the gross remuneration of the employee in question for a period of 12 months.

#### **4 Retention of title and rights of use**

- 4.1 All goods delivered to the Customer remain the property of ACA until all amounts that the Customer owes for the items or work provided or to be provided under the agreement, as well as the amounts referred to in article 2.8, including interest and fixed compensation, have been paid in full to ACA.
- 4.2 Rights of use to the products and/or activities delivered will always be granted to the Customer, or, as the case may be, transferred, on the condition that the Customer pays the agreed compensation promptly and fully, and after the amounts specified in article 2 of these General Terms and Conditions of ACA have been paid.

#### **5 Transfer of Risk**

- 5.1 The risk of loss or damage to the goods that are the object of the agreement shall pass to the Customer at the time these goods are actually made available to the Customer or its appointee.

#### **6 Third party products**

- 6.1 If and insofar as ACA makes products of third parties available to the Customer, for these products, the terms and conditions of these third parties apply, to the exclusion of the provisions of these General Terms and Conditions. Where appropriate, ACA will communicate the terms and conditions of the third party to the Customer no later than the time the agreement is concluded. The Customer accepts these terms and conditions of third parties.
- 6.2 In the relationship between the Customer and ACA, if and insofar as these terms and conditions of third parties are deemed not to apply or are declared inapplicable for whatever reason, the provisions in these General Terms and Conditions apply.
- 6.3 ACA liability for third party products will in no case exceed that which is recoverable from the third party/parties in question.

#### **7 Intellectual or industrial property rights**

- 7.1 All intellectual or industrial property rights to all products developed or made available under the agreement belong exclusively to ACA and/or its licensors. In these General Terms and Conditions, by 'Product' is understood: software, or other materials such as analyses, designs, documentation, reports, offers, as well as preparatory materials.
- 7.2 If and to the extent that the agreement does not stipulate otherwise, on products developed by ACA specifically for the Customer, including the source code thereof, the Customer receives a non-exclusive, unrestricted right of use, including the right to make changes to these products. The Customer undertakes not to market the products commercially.

7.3 ACA will defend the Customer at its own expense against any claims from third parties that are based on the assertion that products developed by ACA constitute a breach of a Belgian intellectual property right, and ACA will indemnify or reimburse the Customer as specified below. This obligation is subject to the following conditions:

- (i) For insurance reasons, each claim must be notified in writing to ACA by the Customer immediately, and in any case within ten working days after taking cognisance thereof, under penalty of forfeiture.
- (ii) The Customer must provide ACA with the necessary powers of attorney, information and cooperation in order, if necessary, to defend the Customer in the above-mentioned actions, and the Customer will grant exclusive control of the amicable settlement and/or proceedings to ACA.
- (iii) The infringement may not be related to changes to the products made by the Customer, or allowed to be made by third parties.

If a court via a *res judicata* decision determines that the products developed by ACA itself infringe any Belgian intellectual property rights of a third party or where there is a good chance in the opinion of ACA that these products are the object of a relevant claim, the Customer confers on ACA the right, according to its choice and at its own expense:

- (i) to obtain the right for the Customer to use the developed and delivered product,
- (ii) to replace the supplied product with a similar product that does not constitute an infringement,
- (iii) to modify the supplied product in such a manner that it no longer infringes and is still equivalent, or
- (iv) to reimburse the initial compensation for the infringing products (minus a fee for use based on a 5-year amortisation period).

Any other or further liability or indemnification obligation of ACA for infringement of intellectual property rights of third parties is excluded, including liability and indemnification obligations of ACA for infringements caused by the use of the products supplied in a non-ACA modified form, or use in conjunction with goods or products not delivered by ACA or in any other way than that for which the products were developed or intended.

7.4 The Customer guarantees that no rights of third parties oppose the making available to ACA of equipment, software or materials for the purpose of use or processing, and the Customer will indemnify ACA against any action based on the claim that such making available, use or processing infringes any right of third parties.

## **8 Cooperation by the Customer**

8.1 The Customer shall always provide ACA in a timely manner all the data or information necessary for, and cooperate fully in, the proper performance of the agreement.

8.2 The Customer is solely responsible for the use and application in its organisation of products and services provided by ACA and for the monitoring and security procedures and proper system management.

8.3 If it is agreed that the Customer will make available software, materials or data on information media, these will meet the specifications required to carry out the work.

8.4 If data necessary for execution of the agreement is not made available to ACA in a timely manner or in accordance with the arrangements, or if the Customer otherwise does not fulfil its obligation, ACA in any case has the right to suspend implementation of the agreement and has the right to charge the costs incurred at its usual rates.

- 8.5 In the case that employees or subcontractors of ACA perform work on location at the Customer, the Customer will provide these employees or subcontractors with reasonably necessary facilities free of charge, such as - if applicable - working space with telecommunication facilities etc. The Customer will indemnify ACA from claims of third parties, employees or subcontractors of ACA that suffer any damage in connection with execution of the Agreement resulting from the acts or omissions of the Customer or of unsafe situations in its organisation.

## **9 Delivery times**

- 9.1 All (delivery) periods specified by ACA are a best-effort estimate determined on the basis of the information communicated or that was known to ACA at the conclusion of the agreement, and these will be respected as far as possible; the mere fact that a (delivery) period is exceeded does not result in negligence on the part of ACA. ACA is not bound by (delivery) deadlines that cannot be met due to circumstances beyond its control that occurred after the conclusion of the agreement. If an infringement of any deadline threatens, ACA and the Customer shall consult as quickly as possible.

## **10 Dissolution and suspension**

- 10.1 The duration of the agreement in principle is indefinite, unless a specific time is expressly agreed in writing or until, in the case of a project, the project has ended.
- 10.2 Each party is entitled to terminate the agreement with immediate effect, in whole or in part, without judicial intervention, by registered letter, if
- (i) the other party fails to comply with one or more of its contractual duties to the extent that this party has not remedied the breach within a period of thirty (30) calendar days after notice of default;
  - (ii) bankruptcy of the other party has been applied for or declared;
  - (iii) the other party, due to seizure, winding up of its business or liquidation of its assets, being placed under guardianship or otherwise loses the power to dispose of its assets or substantial parts thereof.
- 10.3 ACA is entitled to wholly or partially suspend its contractual performance without judicial intervention if the Customer compromises, or threatens to compromise, ACA's rights and/or the services provided to ACA's customers.
- 10.4 ACA is also entitled to suspend its contractual performance with immediate effect without judicial intervention, wholly or partially, if the Customer, after notice of default, fails to comply with one or more obligations of the Agreement.

## **11 Liability of ACA; indemnity**

- 11.1 All contractual obligations of ACA are best effort commitments. ACA does not give any express or implied warranty relating to the goods or services, including any guarantee for fitness to a particular purpose or marketability.
- 11.2 If it is agreed that the agreement is implemented in several phases, ACA has the right to postpone the following phase until the Customer has accepted the results of the preceding phase in writing and complied with all other obligations related to that phase.
- 11.3 If ACA falls short in compliance with its obligations, it is only obliged to perform the service again (compensation in kind). Only if this proves impossible, is it obliged to compensate the direct damage within the limits defined below.
- 11.4 ACA liability is excluded for indirect damages, including consequential damages, lost profits, lost savings, loss due to business interruption and loss of data.
- 11.5 In the case of alleged poor quality goods or services, the Customer will actively cooperate in all studies that aim to determine the cause, and take all measures to secure evidence that may be relevant.
- 11.6 ACA is only liable for defects in the delivered good or the delivered service that exist at the time of delivery and that manifest themselves within a period of 2 months from delivery. In the case of a defect, the Customer has no right to damage compensation. If the defect concerns a good, the Customer is only entitled to the free repair or restoration of the good or service, or free replacement of the good or service, at the discretion of ACA. If the free replacement or improvement is impossible or disproportionate, the Customer is only entitled to demand an appropriate price reduction.

- 11.7 In order to assert any rights concerning a defect or shortcoming on the part of ACA, the Customer must notify ACA by registered letter within 5 working days after the day on which the Customer noted the defect, failure or damaging fact. The legal claim of the Customer lapses after 3 months from the date on which it discovered the defect, failure or damaging fact
- 11.8 The total liability of ACA is limited to compensation of direct damages up to the amount of the agreed contract price (excluding VAT) for the products to be delivered by ACA and the work to be done. If the agreement is a continuing performance contract, the total liability of ACA is limited to the total fees (excluding VAT) for the products to be delivered and the work to be performed by ACA for one year. In any event, total liability for direct damages is limited to a maximum of € 125,000 (one hundred twenty five thousand euro).
- 11.9 To the extent not excluded by other provisions of these General Terms and Conditions, in the event of damage due to death or bodily injury, the total liability of ACA is limited to a maximum of € 125,000 (one hundred twenty five thousand euro) per event, with a series of related events being regarded as a single event.
- 11.10 The Customer indemnifies ACA against all claims from third parties for product liability due to a defect in a product or system that is delivered to a third party by the Customer and that partly consisted of products supplied by ACA, except if and insofar as the Customer proves that the damage was caused by those products, in which case the liability of ACA is excluded and/or limited in accordance with the other provisions of these General Terms and Conditions.

## **12 Force majeure**

- 12.1 ACA is not obliged to fulfil any agreed obligation if prevented from doing so by force majeure. The agreed obligations in such a case are totally or partially suspended for the duration of the force majeure, without ACA being liable for any damages with respect to the Customer. By force majeure is understood: strikes, total or partial interruption of transport, electricity and telecommunications problems, business interruptions, breach of contract and/or force majeure on the part of suppliers, licensing requirements and other legal and regulatory requirements, the death of an involved employee, serious illness of an involved employee, prohibitions or orders from the authorities.
- 12.2 If the situation of force majeure lasts more than fifteen days, ACA has the right to terminate the agreement in writing by registered letter without prior recourse to a judge and without damage compensation. In such a case, ACA is entitled to payment by the Customer for any goods or services already provided and the costs that have already been made with a view to the future implementation of the agreement.
- 12.3 The failure by ACA to fulfil its contractual obligations as a result of such force majeure is not a ground for termination, dissolution or suspension of execution of the agreement by the Customer.

## **13 Applicable law and disputes**

- 13.1 Agreements between ACA and the Customer, and these General Terms and Conditions are governed by Belgian law.
- 13.2 Disputes between ACA and the Customer that might arise from an agreement concluded by ACA with the Customer or as a result of further agreements resulting therefrom, may only be settled by the courts of the judicial district of Antwerp, Hasselt division.

## **14 Miscellaneous**

- 14.1 ACA reserves the right to call upon the services of subcontractors to execute the agreement.
- 14.2 The fact that a right is not enforced or is not used, the fact that a penalty or procedure is not applied, or the failure to bring a claim by ACA does not imply a renunciation or waiver of rights.