

**GENERAL TERMS AND CONDITIONS**

**OF**



**IT RENT**

*Any device, anytime, anywhere*

**Flex IT Rent B.V.**

**Dorus Rijkersweg 15  
2315 WC Leiden**

**Chamber of Commerce registration no. 66982804**

**October 2016**

## **ARTICLE 1: APPLICABILITY**

**1.1** These terms and conditions are applicable to every offer, sale and lease of goods (both material and non-material in nature), services and supplies, as well as those purchases of goods, which are hereinafter referred to as 'asset(s)', made by Flex IT Rent B.V. (which is registered with the Chamber of Commerce under number 66982804 and hereinafter referred to as Flex IT Rent and/or its affiliated subsidiaries/companies as described in the Netherlands Civil Code, Book 2, Articles 24 a up to and including 24 b) to third parties, and to all work undertaken on behalf of the other party, as well as to all agreements in the broadest sense of the word entered into with third parties by Flex IT Rent.

**1.2** The 'other party' referred to in these terms and conditions means the buyer, lessee, client, user and seller of "Assets" as described in Appendix 8.

**1.3 a.** Flex IT Rent undertakes a range of business activities in the area of automation and communication technology. The nature of the various activities means that these general terms and conditions consist of a general section and a specific section (the appendices).

**b.** Provisions have been added in the appendices for the various activities relating to a number of Articles in these terms and conditions. The deviating provisions in the relevant appendix shall prevail insofar as these additional provisions deviate from that which is included for the relevant topic in the general section.

**c.** A number of provisions in the appendices include specifics with regard to that which is stipulated in general terms in the general section. These specifics should, amongst other things, be read as examples. They are not exhaustive and do not impede the additional effect of that which is stipulated by Flex IT Rent in the general section, nor do they restrict the rights of Flex IT Rent that are not described in these terms and conditions.

**1.4** These terms and conditions apply within and outside of the Netherlands, irrespective of the residence or domicile of the parties to any agreement and irrespective of the place where the agreement is formed or should have been enforced.

**1.5** Due to the applicability of these general terms and conditions the applicability of all general terms and conditions used by the other party and/or general terms and conditions introduced at any moment relating to purchase and/or otherwise is excluded for all agreements concluded or to be concluded between the other party and Flex IT Rent.

**1.6** Any deviations from these terms and conditions in offers, orders/agreements that are applied/permitted at any time by Flex IT Rent shall never give the other party the right to subsequently rely on those deviations or to claim the application of such a deviation as an established fact for him/her.

**1.7** If the other party inspects or could have inspected these terms and conditions in a language other than Dutch and there is a difference of opinion about the interpretation of the text the Dutch version shall prevail above the foreign language version unless Flex IT Rent renounces this explicitly in writing.

## **ARTICLE 2: OFFERS**

**2.1** Unless stated specifically otherwise in writing, all offers, quotations and cost estimates from Flex IT Rent are entirely without obligation. They are made to the best of Flex IT Rent's knowledge and are based on any information that is provided with the request.

**2.2** The statements provided by Flex IT Rent in images, websites, multimedia, catalogues, folders, drawings or in any other way concerning the size, capacity, performance, colour, material structure, finish or results must be regarded as an approximation and provided without obligation.

**2.3** Flex IT Rent is not bound by the statements given in sub 2.1 and 2.2 and therefore accepts no liability whatsoever for any inaccuracies in this information.

**2.4** Unless agreed explicitly otherwise in writing, all offers from the other party are final.

**2.5** Flex IT Rent retains the right, without giving reasons, to reject offers and orders from the other party, to supply on a 'cash on delivery' basis only or to demand payment in advance.

### **ARTICLE 3: ORDERS/AGREEMENTS**

**3.1** An order means: every agreement with Flex IT Rent, irrespective of whether it is for the performance of work, the provision of personnel, material or space or any other form of performance, such being in the broadest sense of the word.

**3.2 a.** All agreements concluded with Flex IT Rent shall only become binding for Flex IT Rent after written confirmation by Flex IT Rent or because Flex IT Rent has commenced performance of the order.

**b.** Any supplements or changes to the aforementioned agreements shall only become binding for Flex IT Rent after and insofar as they have been accepted by Flex IT Rent and confirmed in writing.

**c.** The other party shall be deemed to have accepted changes or supplements to agreements with Flex IT Rent if the other party has not objected to this (these) change(s) and/or supplement(s) in writing within 8 days after the other party has become aware of or could have become aware of the change/supplement.

**d.** The other party is deemed to be aware of the intended change/supplement at the moment that Flex IT Rent has commenced the work to which the change/supplement relates.

**e.** Only the Board and any person explicitly authorised by the Board for that purpose can and may conclude agreements on behalf of Flex IT Rent.

**3.3** Unless agreed explicitly otherwise in writing, Flex IT Rent has the right at all times to arrange for part or all of the order to be undertaken by third parties, whereby these terms and conditions shall also work in favour of these third parties, on condition that Flex IT Rent authorises them, if necessary subsequently, in writing to invoke these terms and conditions without this authorisation creating any obligations whatsoever to Flex IT Rent.

**3.4** Flex IT Rent has the right to dispose of and/or encumber the agreements concluded with the other party without the need for Flex IT Rent to seek the permission of the other party. The other party is not permitted to exercise such acts.

**3.5** Where Flex IT Rent agrees with the other party to provide a service to the other party this shall be an obligation to perform this service to the best of one's ability.

**3.6** Flex IT Rent is free to choose whom it shall engage to provide the service agreed with the other party. Unless agreed otherwise explicitly in writing, it is also free to choose to replace this person or persons and/or third party as it sees fit.

**3.7** In the event that Flex IT Rent supplies and/or makes equipment and/or software available to the other party as part of the agreement and this equipment and/or software is the subject of licences granted to Flex IT Rent by third parties the other party shall be subject to all of the provisions of those licences and shall indemnify Flex IT Rent against all consequences from the use of that equipment and/or software that is in conflict with the provisions of those licences.

**3.8** In the event that Flex IT Rent supplies and/or makes available equipment and/or software applications to the other party as part of an agreement, which have been developed by and/or for Flex IT Rent, or in respect of which the other party otherwise becomes aware of, these may not be used by and/or on behalf of the other party for any purpose other than that for which the equipment and/or software was supplied and/or made available to the other party. These

applications may not be copied and/or distributed by the other party in any way whatsoever unless this is with the prior written permission of Flex IT Rent.

#### **ARTICLE 4: LIABILITY**

**4.1** With the exception of that which is stipulated in Article 9 of these terms and conditions, Flex IT Rent is not liable for any loss, either direct and/or indirect, that is the result of failure to comply with the goods and/or services provided by and/or on behalf of Flex IT Rent under the agreement – including additional work – unless this is the result of an intentional act or gross negligence. Consequently, Flex IT Rent is likewise not liable towards the other party in any way whatsoever in the event that its suppliers remain in default nor is Flex IT Rent liable in the event of major calamities such as fire, water damage and external contingencies such as wars and earthquakes for example.

**4.2** Insofar as the other party or a third party engaged by the other party is involved in the execution of a transaction between Flex IT Rent and the other party on the basis of co-work and/or the provision of assistance, Flex IT Rent shall not in any way whatsoever and in any form whatsoever be liable for any damage caused on the part of the other party and/or the third party that it engages; nor shall Flex IT Rent be liable towards the other party's ultimate client.

**4.3** If, for any other reason relating to the agreement, Flex IT Rent is held liable for compensation, the compensation owed shall always be limited to the highest invoice amount (excluding value added tax) in relation to the supplied goods and/or services up to a maximum of 11,500 euro (in words; eleven thousand and five hundred euro).

**4.4** A claim under these terms and conditions shall not suspend the other party's payment obligation towards Flex IT Rent.

**4.5** A condition for assessing whether a request for compensation is to be handled is that the other party directly and immediately reports the damage to Flex IT Rent by registered letter containing sufficient detailed information. Every entitlement for the other party to claim compensation from Flex IT Rent shall be cancelled on the mere expiry of six (6) months after the loss occurred or after this could reasonably have been discovered.

#### **ARTICLE 5: DELIVERY DATE AND PLACE OF DELIVERY**

**5.1** The delivery date and/or delivery period stated in the quotes, confirmations and contracts for the goods and/or services to be supplied by Flex IT Rent is a rough estimate of the target moment for delivery/realisation and/or completion. Flex IT Rent shall endeavour to comply with this as much as possible, however, it is non-binding for Flex IT Rent.

**5.2 a.** If Flex IT Rent exceeds the delivery date and/or delivery period for whatever reason and whether or not excessively, shall never give the other party the right to claim compensation, termination of the agreement or breach of any obligation on Flex IT Rent that may arise under the relevant agreement or under any other agreement that may or may not be associated with this agreement.

**b.** Flex IT Rent shall enter into discussion with the other party in the event that the delivery date and/or delivery period is exceeded excessively – this being at the discretion of Flex IT Rent.

**5.3 a.** Delivery by and/or on behalf of Flex IT Rent shall be made ex-works Flex IT Rent or at another place determined by Flex IT Rent. This shall also apply to non-material products such as, for example, but not limited to digital communication.

On handover by Flex IT Rent of the goods to be delivered to and/or on behalf of the other party, Flex IT Rent is entitled to demand that valid proof of identity of the recipient, being the other party or third party engaged by the other party, is provided. Flex IT Rent is also entitled to make and archive a copy of that ID for the benefit of its administration.

**b.** On the other hand, all deliveries by the other party shall be made carriage paid to Flex IT Rent's premises and/or to another location determined by Flex IT Rent.

**5.4 a.** If the goods or services offered by Flex IT Rent to the other party on delivery are not accepted by the other party then the other party shall automatically be in breach and the goods and/or services offered shall be kept available for the other party for a period of 8 days at the expense and risk of the other party. After the aforementioned period, Flex IT Rent has the right to recover from the other party as compensation for the damage suffered and to be suffered the total amount that the other party would have owed in the event of timely compliance in relation to the contested transaction, plus all costs incurred as a result of the non-compliance by the other party plus back interest, without this requiring any further notice of default and/or supply obligation in relation to the contested goods.

**b.** Irrespective of whether Flex IT Rent invokes the aforementioned right to compensation for loss suffered and/or to be suffered, it shall have the right, by the mere lapse of the aforementioned availability period of 8 days, to freely possess the contested goods and to dispose or not dispose of those goods.

**5.5** The other party must ensure that the room to be used by the other party or on its behalf for the service agreed with Flex IT Rent is equipped adequately in order to facilitate a successful delivery and/or installation by Flex IT Rent. If this is not the situation, in full or in part, Flex IT Rent shall be entitled to apply that which is stipulated in Article 10 of the general section or to charge the other party for the costs of the suffered delay and/or the modifications to be made.

## **ARTICLE 6: TRANSPORT AND TRANSPORT RISK**

**6.1** Flex IT Rent shall determine the method of transport and the means of transport.

**6.2 a.** Unless agreed explicitly otherwise in writing, the transport of the goods ordered from, repaired by and/or maintained by Flex IT Rent shall be undertaken at the cost and expense of the other party.

**b.** Unless agreed explicitly otherwise in writing, the transport of goods from the other party to Flex IT Rent, also in the case of Assets purchase as described in Appendix 8, shall also be undertaken at the cost and expense of the other party.

**c.** In the event that Flex IT Rent has arranged and pre-paid and/or paid the costs for the transport, the other party shall be liable for any damage suffered during transport.

**6.3** The other party must ensure proper accessibility to the object where the goods/services to be provided by Flex IT Rent or on its behalf are to be delivered and/or collected. If, in the opinion of Flex IT Rent, the object is not properly accessible Flex IT Rent cannot be obliged in any way whatsoever by and/or on behalf of the other party to still deliver the goods.

Despite this, if Flex IT Rent does assist with the delivery of the goods, Flex IT Rent shall be entitled to charge the other party for the additional costs it has had to incur for this.

**6.4 a.** The goods to be delivered to the other party shall only be delivered to ground floor. Goods to be collected by Flex IT Rent from the other party must be properly accessible at the moment of collection on the ground floor.

**b.** If the goods have to be delivered to or collected from a location other than on the ground floor, Flex IT Rent cannot be obliged to make that delivery or collection by or on behalf of the other party. If Flex IT Rent assists with the delivery or collection at a location other than on the ground floor it shall be entitled to charge the other party for the additional costs incurred for that and the risks shall also be entirely at the expense of the other party.

**c.** If at the time of the delivery or collection the other party is not present and/or appears unable to take receipt of the goods or to make the goods available or is otherwise in default then Flex IT Rent shall have the right to convert the delivery into a collection obligation, or delivery obligation on the other party at an address specified by the carrier or Flex IT Rent. This shall be after the other party has been notified of this by means of written notice left for the other party. The extra costs associated with this shall be entirely at the expense of the other party.

**6.5 a.** On arrival/receipt of the goods the other party must satisfy itself of the condition of the goods. If it appears that the goods or material has been damaged the other party must then take all measures to recover compensation from the carrier.

**b.** By signing for the goods without lodging a protest against the proof of receipt, issued by or on behalf of Flex IT Rent/the carrier, the other party declares that it has received the goods in good condition.

**c.** If the other party takes receipt of the goods but fails to sign the proof of receipt issued by or on behalf of Flex IT Rent/the carrier, the other party declares that the goods have been received in good condition.

**6.6** Unless agreed explicitly otherwise in writing, if Flex IT Rent allows the other party to return to Flex IT Rent and/or its supplier - in full or in part - the goods supplied by and/or on behalf of Flex IT Rent then this shall only be permitted on the basis of the "RMA and conditions". Flex IT Rent has the right to only make the content of the "RMA and conditions" procedure known before the return, without this interfering with the applicability of this provision. In that case this provision shall not be eligible for set-aside.

**6.7 a.** If the other party returns the goods in conflict with the "RMA and conditions" Flex IT Rent shall have the right to refuse their acceptance or can accept their receipt without the other party being able to derive any rights from that.

**b.** In the event of sub 6.7a, Flex IT Rent has the right to retain possession of the goods as additional security, the right to subsequently return the goods to the other party again at the other parties expense and risk, the right to offer the goods for collection by the other party, whether or not after payment by the other party of the outstanding amounts it owes, and Flex IT Rent has the right – after the expiry of 4 weeks – to sell, dispose of or destroy/have destroyed the returned goods if the other party remains in default in any aspect against Flex IT Rent.

## **ARTICLE 7: PRICES AND COSTS**

**7.1 a.** Unless agreed explicitly otherwise in writing, for each order Flex IT Rent shall set a separate price or a rate in euro.

**b.** This price or rate is exclusively intended as the amount to be paid for the goods or services to be provided by Flex IT Rent, including the normal costs associated with that.

**c.** The prices stated in the quote are based on cost price factors, exchange rates, wages, taxes, rights, charges, freight, etc., prevailing at that time. In the event of an increase in these factors Flex IT Rent has the right to correspondingly change the quoted (sale) price. Flex IT Rent also has the right to change the price for current agreements at any moment, as it deems fit, by an inflation correction according to the Dutch or European consumer price index (CPI).

**7.2** The price or the rate therefore excludes the levies from the government and/or other bodies, including penalties, insurance premiums, etc.

**7.3** Flex IT Rent has the right to demand payment in advance or security (in the form of a bank guarantee).

**7.4** Flex IT Rent retains the right to charge for collection costs and/or shipping costs.

## **ARTICLE 8: PAYMENT TERMS**

**8.1** Unless agreed explicitly otherwise in writing, the payment of the invoices sent by Flex IT Rent is to be made within 14 days after the date of the invoice, without deduction of discounts and without any kind of offset.

**8.2** Unless agreed otherwise, payment of rental instalment is to be made exclusively before the start of the rental period, subject to a maximum payment term of 14 days.

**8.3** Flex IT Rent is authorised to offset its outstanding claims against the other party, including for additional work, against the amounts it owes to the other party, or to another entity belonging to the group or organisation of the other party. The other party waives any right to offset with regard to mutually owed amounts.

**8.4** Invoices from the other party and/or on behalf of the other party that Flex IT Rent receives later than six months after delivery of the products from the other party shall not be accepted. The other party's right to payment shall lapse on expiry of the period stated in this paragraph.

**8.5** Flex IT Rent is authorised to raise part invoices for orders that will be delivered in parts and to demand payment for such invoices in accordance with that which is stated in relation to invoice payment in Article 8.

**8.6** If the other party has authorised a standing order for the total amount of the order to be collected automatically from its account this shall concern a one-off and irrevocable collection instruction. However, in the event of a failed collection, Flex IT Rent has the right to issue a new collection order at the expense of the other party.

**8.7** Flex IT Rent has the right to demand further security if the other party's creditworthiness gives cause for this. As long as that security is not provided by the other party, Flex IT Rent shall have the right to suspend the work and/or the delivery, such being without prejudice to its right to demand compliance and/or compensation.

**8.8** Discounts provided by Flex IT Rent can only be granted after mutual dialogue between Flex IT Rent and the other party. Unless agreed otherwise in writing, these discounts shall be one-off discounts. Previous discounts cannot be claimed by and/or on behalf of the other party for subsequent transactions.

## **ARTICLE 9: CLAIMS**

**9.1 a.** Any claims regarding both the delivery of goods by Flex IT Rent and the services provided by Flex IT Rent and in respect of its invoice amounts must be submitted to Flex IT Rent in writing and by registered letter within 5 days after receipt of the relevant goods, services and/or relevant invoices, with precise details of the facts to which the claims relate.

**b.** Where it is agreed that the transport risk rests with Flex IT Rent, the transport claims for the delivered goods must be submitted by and/or on behalf of the other party within 2 working days, with precise details of the facts to which the claims relate. Insofar as the damage is deemed to be immediately visible on receipt, the damage must also be recorded on the carriage note / delivery note signed by or on behalf of the other party.

**9.2** Unless agreed explicitly otherwise in writing, insofar as the submitted claim relates to the return of goods it shall be subject to Flex IT Rent's "RMA and conditions". The other party can find the "RMA and conditions" in the "RMA and conditions" Appendix in these terms and conditions. These conditions can also be requested from Flex IT Rent.

**9.3** The right of the other party to make a claim shall be cancelled with regard to goods that have been processed by or on behalf of the other party.

**9.4** The other party cannot derive any rights from Flex IT Rent's agreement to investigate a claim and/or acceptance of the RMA Request. A claim does not release the other party for its payment obligations towards Flex IT Rent.

**9.5** The other party is not only obliged to immediately stop the use, processing and/or installation of the relevant goods and/or services and to also do and arrange everything that is reasonably possible to prevent (further) damage. The other party is also responsible to immediately – on first request – provide full assistance to Flex IT Rent within a reasonable period of 10 working days in order for the claim to be handled.

**9.6** Claims from the other party with regard to the clauses in these terms and conditions as referred to, amongst other things, in Article 6:233 sub a of the Netherlands Civil Code (invalidity with regard to one or more clauses on the basis of being unreasonably onerous) must also be submitted to Flex IT Rent in writing by recorded delivery with precise details of the fact to which the claim relates within 5 days after inspection of these terms and conditions or the moment at which they could have been reasonably become aware of. The other party's right to claim shall be cancelled at the moment the agreement is formed. The other party waives its right to the subsequent invoking of 'unreasonably onerous' of one or more clauses in these terms and conditions, insofar as the clause that is potentially unreasonably onerous is not prescribed as mandatory by the legislator.

**9.7** If claims submitted by the other party fail to comply with that which is stipulated above they can no longer be accepted and the other party is deemed to have accepted the goods delivered and/or service provided. In that case, Flex IT Rent cannot be held liable by the other party and/or on behalf of the other party in any way whatsoever and in any form whatsoever for the alleged claim and the consequences of that.

**9.8** If Flex IT Rent is of the opinion that a justified claim has been submitted it shall have the right to either determine in mutual consultation to pay a financial sum to the other party as compensation in relation to the value of the goods forming the justified complaint or to make a new delivery under the existing agreement or to properly repair the delivered goods or to terminate the agreement, such being under the obligation on the part of the other party to return to Flex IT Rent (carriage paid) the incorrect or defective goods; this being at Flex IT Rent's discretion.

**9.9** Flex IT Rent is only obliged to investigate submitted claims when the other party has met in full all of its existing obligations towards Flex IT Rent at the time the claims are submitted, irrespective of the agreement under which they exist or their nature.

**9.10** Flex IT Rent has the right to refuse to accept return shipments that are not franked or are insufficiently franked or inadequately packed. All return shipments from the other party are to be undertaken exclusively under the applicability of the "RMA conditions" (see Articles 6.6 and 6.7) and are at the expense and risk of the other party.

**9.11** Flex IT Rent has the right to charge the other party the extra costs incurred by Flex IT Rent with regard to the handling of claims submitted by or on behalf of the other party that are unjustified.

## **ARTICLE 10: CANCELLATION/TERMINATION AND SUSPENSION**

**10.1** If the other party fails or continues to fail to comply with its obligations with regard to one, multiple and/or all supplies made by Flex IT Rent, work undertaken and/or for any other reason, Flex IT Rent has the right to suspend all or some of its obligations towards the other party and/or to cancel/terminate the underlying agreement in full or in part without Flex IT Rent being held liable in any way whatsoever by the other party and without prejudice to Flex IT Rent's rights.

**10.2** Flex IT Rent also has the right stated in 10.1 in the event the following situations arise with regard to the other party; committing of punishable acts that affect the business relationship with Flex IT Rent as well as the good name and reputation of Flex IT Rent, bankruptcy, suspension of payments, accession to the Debt Management (Natural Persons) Act, other forms of debt management, liquidation of legal form / business activities, seizure or – in Flex IT Rent's opinion – the threat of one or more of these situations, including tax arrears. All claims by Flex IT Rent against the other party shall in that case become immediately due and payable without the need for any breach notice and/or default notice being required.

**10.3** If the other party wishes to terminate/cancel the agreement(s) it has concluded with Flex IT Rent then Flex IT Rent shall have the right to demand compliance with the concluded agreement(s) or – at Flex IT Rent's discretion – the other party must pay cancellation/termination costs of at least 30% of the financial value of the agreement.

Flex IT Rent also has this right for the situations stated in 10.1.

**10.4** In the event of cancellation or termination of lease and/or contract agreements the other party shall owe at least the remaining instalments under the relevant agreement, subject to a minimum of 50% of the original financial value of the agreement.

**10.5** In all of the cases referred to in Article 10, Flex IT Rent also has the right to recover from the other party all losses suffered or to be suffered by Flex IT Rent and/or on its behalf in any way and/or in any form whatsoever.

**10.6** In all of the cases referred to in Article 10 Flex IT Rent cannot be held liable in any way whatsoever by and/or on behalf of the other party for any direct or indirect consequences experienced as a result of any of Flex IT Rent's actions pursuant to this Article.

**10.7** Flex IT Rent has the right to continue the performance of the agreement concluded with the other party or to suspend the performance in part or in full until after the moment it provides its approval, insofar as Flex IT Rent considers this necessary for the performance and/or continuation of the agreement.

#### **ARTICLE 11: LATE PAYMENT OR NON-PAYMENT CHARGE**

**11.1** If the invoices sent by Flex IT Rent are not paid within the agreed term from the date of the invoice the other party shall be deemed to be in default by operation of law.

**11.2** In the event of late payment or non-payment, Flex IT Rent has the right, without the need for further notice of default, to charge the other party interest from the due date of the invoice on the entire amount owed by the other party, such interest being at the statutory overdue interest rate subject to a minimum of 1% per month or part thereof. This is without prejudice to Flex IT Rent's further rights, including the right to charge the other party for all costs associated with the collection, both judicial and extrajudicial collection costs, the latter of which is fixed in advance at 15 % of the amount to be collected, subject to a minimum of 250.00 euro (in words; two hundred and fifty euro).

**11.3** Where the legislator has determined under law that the extrajudicial collection costs to be paid by the other party, the other party shall owe the extrajudicial collection costs determined in that order.

#### **ARTICLE 12: RETENTION OF TITLE**

**12.1** As long as the other party fails to make payment in full to Flex IT Rent for all of the goods, parts and installations supplied by Flex IT Rent and/or work undertaken by Flex IT Rent, all of the goods supplied shall remain the undisputed property of Flex IT Rent.

**12.2** The other party is responsible for ensuring the careful handling of the goods supplied and for insuring them against normal risks and unless it has written permission from Flex IT Rent and for as long as the other party has failed to meet all of its obligations towards Flex IT Rent, it shall not have the right to sell and/or re-sell, encumber, lease out, make available for use and/or pledge (without notice to the debtor) the goods.

**12.3** If and for as long as Flex IT Rent remains the owner of the goods supplied, the other party shall notify Flex IT Rent immediately if the goods supplied are seized and/or threaten to be seized, or if any other claim is made against (any part of) the goods supplied. Furthermore, the other party shall (in that case) notify Flex IT Rent of the location where the goods it owns are located. In the event of seizure or (provisional) suspension of payments, the other party shall immediately inform the bailiff making the attachment or the administrator of Flex IT Rent's (title) rights. The other party guarantees that an attachment on the goods will be lifted immediately.

**12.4** If the other party fails to meet any obligations arising under the agreement with regard to the sold goods and/or work undertaken, Flex IT Rent shall have the right – without the need for further notice of default – to take possession of the goods or materials, in which case the agreement shall be terminated without legal intervention and without prejudice to Flex IT Rent's right to claim judicial or extrajudicial compensation for any loss suffered or yet to be suffered by Flex IT Rent, including: losses incurred, loss of profit, interest, transport costs, etc..

**12.5** When data carrier goods are recovered under retention of title, Flex IT Rent can in no way be held liable by and/or on behalf of the other party for the loss of data, software and such like that is present on those goods. Flex IT Rent has the right – also without being held liable in any way whatsoever towards or on behalf of the other party – to remove and/or destroy at any moment, in full or in part, the information present on those goods.

**12.6** Flex IT Rent retains the right to take actual possession of goods, tools, materials, cars, money, securities, (financial) records, data received or generated, documents, software, databases, etc., belonging in any way to the other party and which Flex IT Rent holds, until such time as the other party has fully complied with its financial and other obligations towards Flex IT Rent.

**12.7** For transactions with the other party which is based in a country where an extended retention of title is applicable, Flex IT Rent has the right to declare at any moment the extended retention of title in that country applicable, without the need to notify the other party of this in advance.

#### **ARTICLE 13: FORCE MAJEURE**

**13.1** Force majeure releases Flex IT Rent from its obligations towards the other party. The following are regarded as force majeure factors: such events and situations that have a demonstrable and direct effect on Flex IT Rent's business practices such as, though not limited to: major faults in its production process, war (including outside of the Netherlands), riot, epidemic, fire, traffic disruption, strike, lock-out, loss of or damage to transport, staff accident or illness, import restrictions or other government restrictions, etc.. Flex IT Rent shall be released from its obligations irrespective of whether the force majeure has occurred at its own premises or elsewhere, for example at the premises of suppliers, transport companies, wholesalers, etc..

**13.2** In the event of disruption to the performance of the agreement as a result of force majeure Flex IT Rent has the right, without legal intervention, to either suspend the performance of the agreement for a maximum of six months and/or to terminate the agreement in part or in full, such at the discretion of Flex IT Rent, without Flex IT Rent being held liable in any way whatsoever by or on behalf of the other party. The other party shall receive written notification of the decision taken by Flex IT Rent in this respect.

#### **ARTICLE 14: INTELLECTUAL/INDUSTRIAL PROPERTY RIGHTS, IMAGE RIGHTS AND DESIGN PROTECTION**

**14.1** The intellectual/industrial property rights, image rights and design protection of all products produced and services provided, etc. by Flex IT Rent, including those for the benefit of the other party, are the property of Flex IT Rent. The use or alternative use of these Flex IT Rent rights, designs and/or ideas, in full and/or in part, is strictly prohibited unless permission has been explicitly granted by Flex IT Rent in writing and all of the conditions set for this by Flex IT Rent have been met in full.

**14.2** The transfer of an intellectual property right by Flex IT Rent to the other party can only occur explicitly and in writing.

**14.3** If the parties agree in writing that an intellectual property right for software, websites, databases, equipment or other materials which has/have been developed specifically for the other party is to be transferred to the other party this shall have no impact on the right or the

possibility of Flex IT Rent to use and/or exploit without restriction, the parts, general principles, ideas, designs, algorithms, documentation, works, programming language, etc. on which that development is based, for other purposes, either for itself or for third parties. Nor shall this affect the right of Flex IT Rent to undertake developments for itself or for third parties that are similar or which are derived from those developments made or to be made for the benefit of the other party.

**14.4** All intellectual property rights relating to software, websites, databases, equipment or other materials such as analyses, designs, documentation, reports, quotes as well as the preparatory material in respect of these, and which have been developed on the basis of the agreement or which have been made available to the other party, shall be vested in Flex IT Rent, its licence provider or its supplier. The other party shall obtain a user right which shall be explicitly granted via these general terms and conditions, the written agreement concluded between the parties and under law. A user right granted to the other party shall be non-exclusive, non-transferrable, non-pledgeable and may not be sub-licensed.

**14.5** The other party shall not remove or have removed or change or have changed any details in the software, website, databases, equipment or materials relating to their confidential nature or relating to the copyrights, marks, trade names or any intellectual property right.

**14.6** The other party guarantees that no third-party rights preclude availability to the supplier of the equipment, software, material destined for websites, databases and/or designs for the purposes of use, maintenance, processing, installation or integration. The other party indemnifies Flex IT Rent against all claims by a third party based on the assertion that such availability, use, maintenance, processing, installation or integration infringes any right of that third party.

**14.7** Flex IT Rent shall never be responsible for data conversion unless this is agreed explicitly with the other party in writing.

**14.8** If the other party fails to adhere to that which is stipulated above under 14.1 up to and including 14.7, Flex IT Rent shall claim – without the need for further notice of default and/or legal intervention – a penalty of at least 11,500 euro (in words; eleven thousand five hundred euro) per day or part thereof during which the breach continues. The aforementioned shall be without prejudice to all other rights such as the right to recover losses from the other party and/or related third parties.

## **ARTICLE 15: PRIVACY, CONFIDENTIALITY, SECURITY, NON-ACQUISITION**

**15.1** The other party grants Flex IT Rent the authority to gather, use, store and transfer any personal data provided for the purpose of allowing Flex IT Rent to meet its obligations under law or under an agreement and the other party indemnifies Flex IT Rent against claims by persons with regard to whom personal data is recorded or being processed in a person registration system for which the other party is responsible for under law or otherwise.

**15.2** Responsibility for data processed using a service provided by Flex IT Rent rests exclusively with the other party. Within the framework of its normal business activities Flex IT Rent can transfer this data to other associated entities or to other relevant business partners who will, in that case, be able to inspect that data. The other party warrants that the content, the use and/or the processing of the relevant data is not illegal and does not infringe any third-party right. The other party indemnifies Flex IT Rent against any legal action and/ or fines by third parties relating to this data or the performance of the agreement.

**15.3** Flex IT Rent has the right to allocate access and identification codes to the other party and to change the allocated access and identification codes. The other party shall handle the access and identification codes confidentially and with due care. Flex IT Rent shall never be liable for losses or costs resulting from the use or misuse of the access and identification codes unless

the misuse has been possible due to a direct consequence of an intentional act or gross negligence on the part of Flex IT Rent management personnel.

**15.4** If, on the basis of the agreement, Flex IT Rent is responsible for providing a form of data security then Flex IT Rent never guarantees that the data security is effective under all circumstances. Flex IT Rent can never be held liable in any way whatsoever by and/or on behalf of the other party if the data security turns out to be inadequate.

**15.5** The other party is responsible for ensuring that all data received from Flex IT Rent in respect of which the other party knows or should reasonably know that it is of a confidential nature, remains confidential. If the other party receives confidential data it shall only use this data for the purpose for which it has been provided and shall protect that data in an adequate manner. In any event, data shall be regarded as being confidential if it is designated as such by either of the parties.

**15.6** In the event of breaching that which is stipulated in 15.5 the other party shall pay compensation for the resulting damage. Furthermore, for each breach the other party shall owe an immediately due and payable penalty of 25,000 euro (in words; twenty-five thousand euro). For each day that the breach continues, the other party shall pay to Flex IT Rent a sum of 5,000 euro (in words; five thousand euro).

**15.7** During the term of the agreement and/or the business relationship between Flex IT Rent and the other party, and for a period of one year immediately thereafter, without the explicit written permission of Flex IT Rent the other party is prohibited from attempting to entice, even via third parties, the person/persons who have performed work for the benefit of the other party on behalf of Flex IT Rent and/or who have performed similar work to a greater or lesser degree, to join the other party and/or affiliated company/organisation/entity as: an employee, an independent or if the person/persons is/are made available on secondment by a third party. A breach of this prohibition is subject to a penalty amounting to the annual salary for one year, with a minimum of 25,000 euro (in words; twenty-five thousand euro) plus 5,000 euro (in words; five thousand euro) for each day that the breach continues. This penalty shall be due and payable immediately to Flex IT Rent upon discovery of the breach, without the need for legal intervention and any other form of notification of default and/or breach.

This shall also be without prejudice to the other rights and claims that Flex IT Rent can invoke against the other party in order, for example (not exhaustive), to recover money and losses yet to be suffered, such being without prejudice to the rights that Flex IT Rent can invoke against the relevant person(s).

## **ARTICLE 16: GUARANTEES**

**16.1** Unless agreed otherwise in writing, Flex IT Rent provides a guarantee for the goods it supplies that is the same guarantee it receives from the manufacturer or supplier. In those cases, the other party is provided with a guarantee according to the provisions of the guarantee clause from the manufacturer that is supplied with the product. Before making a claim under such a "Factory Guarantee" the other party must contact the manufacturer in the first instance.

**16.2** Insofar as the manufacturer has agreed with Flex IT Rent that the guarantee will (in part) be implemented via Flex IT Rent or insofar as Flex IT Rent has agreed explicitly with the other party that Flex IT Rent shall handle any "Factory Guarantee" claim with the manufacturer on behalf of the other party and the other party contacts Flex IT Rent in accordance with the "RMA and conditions" then Flex IT Rent shall only act as an intermediary between the other party and the manufacturer. In these cases, the "RMA and conditions" described in Appendix 9 are applicable. Flex IT Rent is not responsible and/or liable in any way whatsoever for the duration and/or the quality of the Factory Guarantee.

**16.3** If Flex IT Rent is to provide a guarantee directly to the other party then that shall only be the case when this is agreed explicitly in writing by Flex IT Rent with the other party.

In that case, the guarantee conditions described in Appendix 10 shall be applicable, unless agreed explicitly otherwise in writing, for example by means of the guarantee provisions of the guarantee certificate for the goods supplied by Flex IT Rent and in that event the conditions stated in Appendix 10 shall serve as a supplement to those. In the event of conflict the provisions of the guarantee certificate shall prevail.

**16.4** In the case of a Factory Guarantee and a claim is made against this by the other party it can only be determined whether the claim in relation to the product supplied is covered by the scope of the Factory Guarantee after the nature of the complaint has been established definitively by or on behalf of the guarantee provider.

**16.5** If the claim is not covered by the scope of the Factory Guarantee and Flex IT Rent has – on the request of and/or on behalf of the other party or on the request of and/or on behalf of the manufacturer – supplied replacement products to the other party before the definitive establishment, then Flex IT Rent shall have the right to charge the other party for the costs of the replacement product for the duration it is in the possession of the other party, including the costs of return transport, which shall equate to Flex IT Rent’s normal rental that is applicable for that product.

#### **ARTICLE 17: GOODS ON APPROVAL AND/OR DISPLAY GOODS**

**17.1** Only if Flex IT Rent has confirmed this in advance in writing to the other party can the goods offered and supplied by or on behalf of Flex IT Rent be regarded as goods on approval and/or display goods for shows, exhibitions, fairs and/or for other purposes specified by Flex IT Rent. Unless agreed explicitly otherwise in writing, these goods shall be supplied to the other party by Flex IT Rent on a loan basis.

**17.2** The other party undertakes to return to Flex IT Rent on first request the goods it receives under the applicability of this Article, with due regard for the agreement concluded by Flex IT Rent with the other party in this respect and/or the notification relating to this issued by Flex IT Rent. It also applies here that the goods shall in that case be returned to Flex IT Rent under the “RMA and conditions” and the return shipment shall be undertaken at the expense and risk of the other party.

**17.3** If the other party fails to return the goods referred to above under Article 17 within the reasonable period of 10 working days or within another period agreed explicitly in writing with Flex IT Rent then Flex IT Rent shall have the right to regard the relevant goods as having been sold to the other party and invoice the other party for them at new value.

#### **ARTICLE 18: GOVERNING LAW AND COMPETENT COURT**

**18.1** All quotes, orders and agreements concluded with Flex IT Rent are governed by Dutch law.

**18.2** All disputes shall be subject to the judgement of the absolute competent court in the court district of The Hague or the judgement of another competent legal body, such being at the discretion of Flex IT Rent.

**18.3** Flex IT Rent can and may freely invoke the law of the country in which the other party is established at any time. In that case, and in deviation from that which is stated under 18.2, the dispute shall be subject to the absolute competent court in the territorial jurisdiction of the other party.

**18.4** In addition, Flex IT Rent has the right to invoke the Vienna Sales Convention at any time it so requires. In that case the court in the territorial jurisdiction of Flex IT Rent shall correspondingly be declared competent to rule on the dispute. Flex IT Rent is not required to notify the other party of this in advance.

**18.5** If any article or sub-article of these “General Terms and Conditions” is in conflict with the law and/or mandatory law and consequently has no effect or is not applied by Flex IT Rent then this shall have no impact on the validity of the other articles.

## **APPENDICES - GENERAL:**

**a.** Flex IT Rent refers to that which it states under Article 1.3 with regard to applicability.

**b.** The activities included in the appendices concern:

1. Services
2. Secondment and consultancy
3. Repair, maintenance and support
4. Software and/or programs
5. Software as a service
6. Cloud solutions and hosting
7. Equipment leasing
8. Assets
9. Return Material Authorisation and conditions
10. General guarantee terms

## **APPENDIX 1: SERVICES**

**1.1** The services referred to in this appendix cover all other forms of services that are not referred to in the other appendices, for example – though not limited to – (project-based) design, realisation and/or installation of automated infrastructures, work environments relating to hardware and/or software and forms of telecommunication.

**1.2** All project plans, ideas, designs, drawings, rollout protocols and suchlike that are developed by and/or on behalf of Flex IT Rent as part of a quote are subject to Flex IT Rent's intellectual property rights and design protection. This includes when one or more of these aspects is/are sold to the other party independently or as a sub-product. In the event the quote is not accepted by the other party, Flex IT Rent has the right to charge the other party – at Flex IT Rent's discretion – for the relevant whole or part on the basis of the number of hours spent.

**1.3** Flex IT Rent shall provide the services agreed in writing between the parties to the other party and/or have the services provided by a third party engaged by Flex IT Rent. All services from Flex IT Rent shall be delivered on the basis of best endeavours unless and insofar as Flex IT Rent has explicitly promised a result in the written agreement and the relevant result is also described in adequately clear terms.

**1.4** Any agreements regarding a service level (Service Level Agreement) shall only be valid if agreed explicitly in writing. The other party shall always notify Flex IT Rent immediately about all circumstances that can affect the service level and its availability. The notification by the other party shall not release the other party from that which is stated in 5.5 "Delivery date and place of delivery" in the general section of these terms and conditions.

**1.5** If agreements have been made with regard to a service level then the availability of software, systems and related services should always be measured in such a way that shut-down for preventive, corrective or adaptive maintenance or other forms of service that are announced in advance by Flex IT Rent, as well as the circumstances that are beyond the control of Flex IT Rent, are not taken into account. Except where evidence to the contrary is provided by the other party, the availability measured by Flex IT Rent shall also be regarded as complete evidence.

**1.6** Flex IT Rent and its employees shall only be bound to follow the instructions issued by the other party during service delivery if this has been agreed explicitly in writing. However, Flex IT Rent and its employees are not obliged to follow instructions that change or supplement the

substance of the agreed services. However, if such instructions are followed, the relevant work shall be paid by the other party in accordance with Flex IT Rent's normal rates and conditions.

**1.7** If a service agreement is concluded with the intention that this is provided by a specific person then Flex IT Rent shall be entitled, whether or not after consultation with the other party, to replace that person with one or more persons with the same and/or similar qualifications.

**1.8** If it is agreed that the services shall be delivered in phases then Flex IT Rent shall have the right to postpone the start of the services belonging to a phase until the other party has approved the results of the previous phase in writing.

**1.9** The other party must ensure that a proper and complete back-up is present prior to the start of work. The other party must ensure that, if necessary, this back-up will be made available on first request to Flex IT Rent and/or a third party engaged by Flex IT Rent for the proper execution of the services to be delivered.

**1.10** If Flex IT Rent provides services on the basis of information to be provided by the other party then this information shall be prepared by the other party in accordance with the conditions specified by Flex IT Rent and shall be provided at the expense and risk of the other party. The other party guarantees that all materials, information, software, procedures and instructions it provides to Flex IT Rent for the delivery of the service are always correct and complete and that all information carriers provided to Flex IT Rent comply with Flex IT Rent's specifications.

**1.11** Where Flex IT Rent agrees with the other party that the service will be delivered for the other party on site then this work shall be undertaken on working days between 08.30 hours and 17.30 hours unless agreed explicitly otherwise in writing. In that case, for the service to be provided by Flex IT Rent or on its behalf, Flex IT Rent shall have the right – for whatever reason – to undertake / have undertaken and/or continue the work outside of these hours. In that case there shall be a higher hourly rate up to a maximum of 200%.

**1.12** Flex IT Rent has the right to charge the other party for costs, including travel and accommodation costs incurred and costs for lost time, if – in Flex IT Rent's opinion – this has been caused by or on behalf of the other party or if Flex IT Rent has not been provided with sufficient opportunity to perform its service work at the agreed time.

**1.13** If the time and/or the location of the service to be provided mean that travel and/or accommodation costs have to be incurred then Flex IT Rent shall be entitled – at its own discretion – to charge these costs to the other party.

In addition, for work undertaken abroad, all charges/ duties, taxes and suchlike imposed by any government body in the relevant country shall be at the expense and risk of the other party.

**1.14** If, in the framework of its service provision to the other party, Flex IT Rent is provided at any time with goods then this shall be at the risk of the other party.

**1.15** When delivering its service on site, Flex IT Rent is in no way and in any form whatsoever liable for damage to, for example but not limited to, equipment, furniture and buildings that is the direct and/or indirect result of the work performed by or on behalf of Flex IT Rent on the instructions of the other party, unless there is evidence of an intentional act and/or gross negligence. Flex IT Rent shall never be held liable by and/or on behalf of the other party if the maintenance it provides does not have the required result, nor shall Flex IT Rent be liable in any way and in any form whatsoever for the non or incomplete communication of the other party's existing software and/or hardware-based products.

**1.16** Without prejudice to the "Force majeure" and "Liability" articles in the general section of these general terms and conditions and that which is stated above under 1.15 in the appendix, for its service Flex IT Rent is, amongst other things though not limited to, not liable in any way and in any form whatsoever in the event of:

- a) improper use or inadequate preparation of the site;
- b) changes or inadequate system maintenance that is not undertaken by or with the permission of Flex IT Rent;
- c) defects and/or other limitations caused by non-Flex IT Rent products that have an impact on the operation of the systems for which Flex IT Rent provides service support;
- d) data loss or downtime of system;
- e) malicious software (i.e. virus, worm, etc.) not introduced by Flex IT Rent or against which the other party has not implemented reasonable security measures, for example in the form of up-to-date virus protection and firewall software;
- f) incorrect use, negligence, accident, fire or water damage, power failures, transport by the other party or other causes beyond the control of Flex IT Rent.

**1.17** Where Flex IT Rent provides advice within the framework of its service provision to the other party, such advice is provided to the best of its knowledge and on the basis of information available to Flex IT Rent, whether or not this information is obtained from the other party. Flex IT Rent is not liable in any way and in any form whatsoever for the non or incomplete compliance with the advice provided under Flex IT Rent's service in relation to the products supplied or the programs, software and hardware-based products present and in relation to the work associated with the installation, unless this is the result of gross negligence on the part of Flex IT Rent.

**1.18** All goods received within the framework of the service provided by Flex IT Rent and/or on its behalf and goods sent to the other party and/or on its behalf by Flex IT Rent shall be transported at the expense and risk of the other party. Unless agreed explicitly otherwise in writing, Flex IT Rent's RMA and conditions are applicable to the shipment of goods to Flex IT Rent by the other party.

**1.19** Where the service is delivered on a project or other basis at the other party's premises or on behalf of the other party and/or on a project basis at a location other than the aforementioned and/or different manner, a handover shall be undertaken on completion and/or part completions.

The handover can take place by means of a completion statement or via tacit handover to the other party, whereby a period of 5 days applies for the tacit handover immediately after completion of the relevant delivery and/or part delivery.

## **APPENDIX 2: SECONDMENT AND CONSULTANCY**

**2.1** A fixed-term secondment and consultancy agreement shall be extended automatically and consecutively for the same period and repeatedly at the end of the agreed period unless it is terminated by Flex IT Rent or unless the other party has explicitly terminated the automatic extension in a timely manner before the end of the term by means of a registered letter.

**2.2** Flex IT Rent has the right in the case of automatic extension to implement a price rise at the start of the extension period provided this does not exceed the inflation correction and/or wage increased for comparable "Collective Contracts of Employment", such being at the discretion of Flex IT Rent. Flex IT Rent also has the right to implement a price increase based on increasing internal and external cost price factors.

**2.3** Flex IT Rent shall make every endeavour to ensure that the seconded person who is made available remains available during the term of the agreement for the work on the agreed days, with the exception of illness or if the seconded person leaves the company's employment. This shall be with due regard for holidays/holiday hours awarded to the seconded person and official leave such as though not limited to, leave for the birth of children and the death of once removed and twice removed relatives.

**2.4** Without the explicit written permission of Flex IT Rent, apart from the work that has been agreed the other party is not permitted to instruct and/or have work undertaken for third parties – irrespective of whether or not this is in return for payment.

**2.5** The supervision and management of the work produced by the seconded person(s) rest with the other party.

**2.6** The other party is obliged to treat the person(s) seconded by Flex IT Rent with due care and diligence and with equality in respect of its own employees. Unless agreed explicitly otherwise in writing, the other party must also observe Flex IT Rent's terms and conditions of employment. Under working conditions legislation, the other party is also responsible and liable for associated damage that may arise.

**2.7** When supplying a seconded person and/or consultant whereby there is a prior (written) agreement, the other party is liable for meeting the full financial obligations arising under that agreement including when the other party, at the time of the start date and/or during the term of the agreement, does not use or only partly uses the services of Flex IT Rent's consultant and/or seconded person.

**2.8** When the seconded person and/or consultant provided by Flex IT Rent performs work abroad on the instructions of or for the benefit of the other party then all charges/duties, taxes, compulsory employee insurances and suchlike imposed by any government body in the relevant country shall be at the expense and risk of the other party.

**2.9** The other party is also responsible for paying all reasonable travel and accommodation costs incurred for Flex IT Rent's consultant and/or seconded person and for adequately insuring the seconded person against all business, travel and accommodation risks faced in that by the seconded person for work undertaken in the Netherlands and/or abroad.

**2.10** Flex IT Rent has the right to charge the other party additional costs up to a maximum of 200% of the hourly rate for the work undertaken by the seconded person and/or consultant outside of normal working hours. Normal working hours are between 08.30 and 17.30 hours on working days (Monday to Friday).

Before allowing work to be undertaken outside of the agreed working hours the other party must first have obtained the explicit written permission of Flex IT Rent.

**2.11** At any time the seconded person reports absent to the other party or is effectively absent, the other party must notify Flex IT Rent of this immediately within 24 hours, if possible stating the reasons for the absence.

When the seconded person reports available again to the other party or has actually resumed work, the other party must notify this immediately to Flex IT Rent, though no later than within 24 hours. Both notifications must always be made in writing. If these periods are exceeded Flex IT Rent shall then have the right to dismiss the notification/complaint.

**2.12** Flex IT Rent is free, without burden or encumbrance of agreements by or on behalf of the other party, to make a change to the consultant and/or seconded person named in the agreement working for the other party, whereby Flex IT Rent shall strive to ensure an equivalent replacement.

Within its abilities, Flex IT Rent shall notify the other party of this as quickly as possible.

Flex IT Rent shall in that case be free to apply a price change to the agreement, as it sees fit, in the event of an interim replacement of the seconded person and/or consultant if the qualifications and/or the purchase price of the replacement consultant and/or seconded person give cause for this.

**2.13** Neither Flex IT Rent nor the consultant made available by Flex IT Rent to the other party and/or on behalf of the other party and/or the person seconded by Flex IT Rent to the other party and/or on behalf of the other party shall be held liable in any way whatsoever for the consequences of their actions with third parties and which arise from the nature of their work at the other party or when this work is undertaken on the instructions of the other party.

**2.14** Flex IT Rent shall do its utmost to make the most competent consultant available and/or to second the most competent personnel to the other party during the term of the agreement. However, Flex IT Rent cannot in any way whatsoever be held liable by or on behalf of the other party for shortfalls in the extent and/or quality of the work delivery and the performance of the consultant and/or seconded person(s).

**2.15** Flex IT Rent is in no way or any form whatsoever liable for the circumstances under which the consultant and/or the seconded person delivers his/her performance. The liability for this rests with the other party.

**2.16** Notwithstanding the earlier intention expressed between Flex IT Rent and the other party, if Flex IT Rent does not succeed in supplying a consultant and/or seconded person Flex IT Rent shall not be deemed to be accountable for the deficiency. This shall also apply if for whatever reason Flex IT Rent is no longer able to provide a replacement consultant/seconded person. In that case, Flex IT Rent shall not be liable for paying any damages or costs.

**2.17** During the term of the agreement and/or the business relationship between Flex IT Rent and the other party, and for a period of one year immediately thereafter, without the explicit written permission of Flex IT Rent the other party is prohibited from attempting to entice, even via third parties, the person/persons who have performed work for the benefit of the other party on behalf of Flex IT Rent and/or who have performed similar work to a greater or lesser degree, to join the other party and/or affiliated company/organisation/entity as: an employee, an independent or if the person/persons is/are made available on secondment by a third party. A breach of this prohibition is subject to a penalty amounting to the annual salary for one year, with a minimum of 25,000 euro (in words; twenty-five thousand euro) plus 5,000 euro (in words; five thousand euro) for each day that the breach continues. This penalty shall be due and payable immediately to Flex IT Rent upon discovery of the breach, without the need for legal intervention and any other form of notification of default and/or breach.

This shall also be without prejudice to the other rights and claims that Flex IT Rent can invoke against the other party in order, for example (not exhaustive), to recover money and losses yet to be suffered, such being without prejudice to the rights that Flex IT Rent can invoke against the relevant person(s).

**2.18** Unless agreed explicitly otherwise in writing, the notice period for the other party is one third of the term before the end of the secondment and/or consultancy agreement with a term of 2 months or less. For agreements with a term in excess of 2 months the notice period shall be at least 31 days before the end of the secondment and/or consultancy agreement.

Flex IT Rent has the right to terminate the secondment and/or consultancy agreement by means of written notice of termination up to and including one day before the end of the secondment and/or consultancy agreement or its extension.

### **APPENDIX 3: REPAIR, MAINTENANCE AND SUPPORT**

**3.1** Repair means the performance of work aimed at restoring faulty equipment, software and functionality.

Maintenance means the performance of work aimed at allowing equipment, software and functionality to operate in the best way possible.

Support means all forms of remote and/or on-site assistance (read support) relating to automation and communication technology that Flex IT Rent provides as service products.

**3.2** Flex IT Rent's work in the field of repair, maintenance and/or support concerns best efforts on the basis of the knowledge and resources available at Flex IT Rent for resolving a number of product type related issues and/or problems, either remotely or otherwise.

**3.3** Prior to sending goods for repair, maintenance and/or support the other party must ensure adequate back-up of information.

**3.4** In the event that the required information is lost or missing from the information carrier components the other party must provide Flex IT Rent with that information on Flex IT Rent's first request.

**3.5** The repair, maintenance and/or support work agreed with the other party shall be undertaken to the best of its ability by Flex IT Rent and/or on its behalf, whereby it will be endeavoured to achieve the realisation within the promised period. If this period is exceeded for whatever reason, this shall not entitle the other party to any form of compensation, including for direct and/or indirect losses.

**3.6** Flex IT Rent has the right – at its discretion – to perform the repair, maintenance and/or support without having to enter into consultation with the other party about this, even if the costs of the repair, maintenance and/or support are substantial in relation to the new value and/or replacement product, and even if they exceed this in a particular case.

**3.7** Flex IT Rent has the right – at its discretion – to select replacement parts for the repair, maintenance and/or support and to charge the other party for these without having to submit these to the other party for evaluation; the same applies if these replacement parts are not original and/or new parts. With regard to this, Flex IT Rent also has the right to charge the other party for external costs that are incurred. Unless agreed explicitly otherwise in writing, on repair, maintenance and/or support, the replacement parts shall automatically become the property of Flex IT Rent without the need to inform the other party of this.

**3.8** Flex IT Rent has the right at all times to charge the other party for the costs of investigating the possibilities and impossibilities of repair, maintenance and/or support. For example, though not exhaustive, in the event that following investigation it appears that the costs of repair, maintenance and/or support will be disproportionately high to such an extent that repair, maintenance and/or support no longer appears possible, or that – on the instructions of the other party and/or on its behalf – the repair, maintenance and/or support is not to be carried out.

**3.9** If Flex IT Rent establishes that goods supplied or presented for repair, maintenance and/or support cannot be repaired, maintained and/or supported within what it considers to be reasonable limits and the other party has failed to explicitly state in writing within a reasonable period of 4 weeks after notification of this that it wishes to have the goods returned then Flex IT Rent shall have the right – against payment for costs by the other party – to destroy, dispose of or recycle the relevant goods.

**3.10** The right stated in 3.9 of this appendix also applies to the return shipment of goods to the other party which are not accepted by the other party after they have been offered repeatedly by Flex IT Rent.

In that case, Flex IT Rent also has the right to dispose of these goods against any reasonable offer and to use the revenue from that to reduce the amount of loss it has suffered.

**3.11** When Flex IT Rent undertakes the repair, maintenance and/or support on site then the other party must ensure that the working environment on site is adequately equipped to guarantee good and smooth progress of the repair, maintenance and/or support to be provided by and/or on behalf of Flex IT Rent. Examples of this (not exhaustive) include, amongst others, a suitably equipped workspace with, amongst other things, heating, lighting, required electrical power supply and suitable communication facilities.

**3.12** Where Flex IT Rent agrees with the other party to undertake repair, maintenance and/or support work on site this work shall be undertaken on working days between 08.30 hours and 17.30 hours, unless agreed explicitly otherwise in writing. In that case, Flex IT Rent has the right, for whatever reason, to undertake or have undertaken and/or continue the repair, maintenance and/or support work outside of these hours. In that case an increased hourly rate of up to a maximum of 200% shall apply.

In deviation from that which is stated above, Flex IT Rent also has the right to make new agreements for repair, maintenance and support.

In both cases the other party is not entitled to any compensation, even for direct and/or indirect losses suffered.

**3.13** Flex IT Rent has the right to charge the other party for costs, including travel costs and costs for lost time, if – in Flex IT Rent’s opinion – this has been caused by or on behalf of the other party or if Flex IT Rent has not been provided with sufficient opportunity to perform its repair, maintenance and/or support work at the agreed time.

**3.14** If the time and/or the location of the repair, maintenance and/or support work to be undertaken mean that travel and/or accommodation costs have to be incurred then Flex IT Rent shall be entitled – at its own discretion – to charge these costs to the other party.

In addition, for work undertaken abroad, all charges/ duties, taxes, compulsory employee insurances and suchlike imposed by any government body in the relevant country shall be at the expense and risk of the other party.

**3.15** Insofar as the goods supplied by Flex IT Rent and/or by a third party or parties it engages for repair, maintenance and/or support contain information carrier components and/or they affect the information processing of other goods, then Flex IT Rent shall never be held liable for any loss of information, functionalities and/or revelation of that information before, during and after the repair, maintenance and/or support.

The same applies to proper functioning or non-functioning of those goods and/or incorrect influence. Flex IT Rent can never be held responsible by and/or on behalf of the other party for the storage of information from the goods containing information; either before, during or after the work undertaken.

**3.16** Where the removal of software and/or data is agreed with the other party, or when this is deemed necessary by Flex IT Rent in the interests of the work to be undertaken then this removal shall take place on the basis of the resources and knowledge it has available. Flex IT Rent cannot be held liable in any way whatsoever by and/or on behalf of the other party if at any subsequent moment it appears that using the resources and knowledge available at that time it appears impossible to recover the removed software and/or data in full or in part.

**3.17** When undertaking its repair, maintenance and/or support work on site, Flex IT Rent is in no way and in any form whatsoever liable for damage to, for example but not limited to, equipment, furniture and buildings that is the direct and/or indirect result of the work performed by or on behalf of Flex IT Rent on the instructions of the other party, unless there is evidence of an intentional act and/or gross negligence. Flex IT Rent shall never be held liable by and/or on behalf of the other party if the maintenance provided does not have the required result.

**3.18** The goods accepted by Flex IT Rent for repair, maintenance and/or support remaining with Flex IT Rent or with a third party it engages shall in all cases be held at the risk of the other party. The other party must personally ensure adequate insurance that covers every form of direct and indirect loss such as, for example though not limited to, fire, water damage, loss and theft.

**3.19** In the event of early termination by the other party, the other party shall remain liable to pay the financial obligations during the remaining period of the earlier concluded agreement, without the other party being able to derive any rights from this.

**3.20** Flex IT Rent has the right on extension of the agreement to adjust the price without the need for prior (written) notification in the event that market conditions give cause for this or the amount of maintenance undertaken gives cause for this. Flex IT Rent has the right to terminate the contract agreement by means of written notice of termination up to one week before the end of the contract or its extension.

**3.21** If Flex IT Rent has concluded a contract agreement for maintenance and/or support with the other party this shall on each occasion be extended automatically by the same period without the need for prior notification, unless the other party has terminated the agreement in a timely manner. Termination by the other party must be notified at least 7 days before the end of a contract agreement which has a term of 3 months or less. For contract agreements longer than 3

months the notice period is 31 days before the end of the contract agreement. If the other party gives notice of termination in less than the stated notice period before the end of the contract agreement this shall not be legally valid in relation to preventing the automatic extension of the contract. Flex IT Rent has the right to terminate the contract agreement by means of written notice up to and including one day before the end of the contract agreement or its extension.

#### **APPENDIX 4: SOFTWARE AND/OR PROGRAMS**

**4.1** Where Flex IT Rent sells software and/or programs to the other party the licences supplied with the software and/or programs are also applicable – in addition to these general terms and conditions – and they cannot be subject to annulment, even if the substance of the licence is only made known to the other party at the time of first use after the formation of the agreement.

**4.2** The sale of software and/or programs means the sale of the user rights, whether or not this is in accordance with that which is stipulated in the associated licence. Where, for whatever reason, Flex IT Rent has not supplied a licence or fails to supply a licence in a timely manner during the transaction, it may still supply the licence at a later stage without this compromising the applicability and/or voidability of the licence and/or the relevant transaction.

**4.3** Flex IT Rent can never be held liable in any way whatsoever by or on behalf of the other party for the properties of the software and/or programs, including external accessibility and data exchange.

Nor can Flex IT Rent be held liable for mismatches occurring at any time between the software and/or programs supplied and the other software and/hardware used by the other party.

**4.4** The other party indemnifies Flex IT Rent against every form of liability relating to losses suffered by or yet to be suffered by the other party and/or on its behalf in whatever form that are the result of; faults, breaches of intellectual property right, the loss of data, functionality and suchlike in the software and/or programs supplied to the other party by Flex IT Rent, which can be traced back to the ultimate suppliers and/or manufacturer.

#### **APPENDIX 5: SOFTWARE AS A SERVICE**

**5.1** Software As A Service (hereinafter referred to as: SAAS) is one of Flex IT Rent's business activities whereby Flex IT Rent offers the other party (online or otherwise) a user right for this service for a limited period, which may or may not be in the form of a software contract.

**5.2** On formation of an SAAS agreement the other party accepts the applicability and the non-nullification of the licence conditions that are supplied with the product by the manufacturer. The other party also accepts this if it first becomes aware of these or could have become aware of these after the formation of the agreement.

**5.3** The user right period commences from the moment that Flex IT Rent makes the SAAS product available to the other party.

**5.4** The other party is not permitted to change the source codes in the SAAS-supported software from Flex IT Rent and is not permitted to use it for other purposes.

**5.5** At any moment that the other party acts or has acted in conflict with the licence conditions then Flex IT Rent shall have the right on discovery of this by Flex IT Rent, the manufacturer and/or an appropriately authorised third party, to terminate the agreement with immediate effect and/or dissolve the agreement by extrajudicial means without the need for any further notice of breach and/or default. Flex IT Rent cannot be held liable in any way whatsoever for any form of loss that the other party suffers as a result of the termination. However, in that case Flex IT Rent has the right to claim from the other party the losses that Flex IT Rent has and/or will suffer in respect of both direct and indirect losses.

**5.6** The other party indemnifies Flex IT Rent, both during the term of the agreement and thereafter, against any form of liability relating to losses suffered or to be suffered by or on behalf of the other party in whatever form as a result of; faults, breach of intellectual property rights, the loss of data, functions and suchlike in the SAAS product supplied by Flex IT Rent to the other party which can be traced back to the original suppliers and/or manufacturer.

**5.7** At any moment that the configuration at the other party does not or no longer, in full or in part, meets the properties of the SAAS product supplied by and/or on behalf of Flex IT Rent then Flex IT Rent shall in no way whatsoever be held liable for that by and/or on behalf of the other party.

The same applies, though is not limited to, when the operating software used by the other party does not support or no longer supports the software supplied under SAAS.

**5.8** Neither Flex IT Rent nor its supplier and/or the manufacturer can be held liable in any way whatsoever by and/or on behalf of the other party for breach of the privacy and/or confidentiality when this is the result of providing assistance in response to a request from a body that is duly authorised by the government. The same applies in the event of corruption and/or loss of data and /or functionalities and confidentiality if this is the result of non-permitted actions by third parties.

**5.9** In the event of early termination by the other party, the other party shall be liable to pay the financial obligations during the remaining period of the earlier concluded agreement, without the other party being able to derive any rights from this.

**5.10** In the event of an extension Flex IT Rent has the right to amend the price without prior (written) notice in the event that market conditions give rise to this. Flex IT Rent has the right to terminate the contract agreement by means of written notice up to one week before the end of the contract or its extension.

**5.11** If Flex IT Rent has concluded a contract agreement with the other party this shall on each occasion be extended automatically by the same period without the need for prior notification, unless the other party has terminated the agreement in a timely manner. Termination by the other party must be notified at least 7 days before the end of a contract agreement which has a term of 3 months or less. For contract agreements longer than 3 months the notice period is 31 days before the end of the contract agreement. If the other party gives notice of termination in less than the stated notice period before the end of the contract agreement this shall not be legally valid in relation to preventing the automatic extension of the contract. Flex IT Rent has the right to terminate the contract agreement by means of written notice up to and including one day before the end of the contract agreement or its extension.

## **APPENDIX 6: CLOUD SOLUTIONS AND HOSTING**

**6.1** Cloud solutions are one of Flex IT Rent's business activities, whereby it offers an online user right to the other party for a solution (including the use of a software application offered in the cloud) in the cloud for a limited period, which may or may not be a contract form.

**6.2** Hosting is one of Flex IT Rent's business activities whereby it offers the other party a user right for web and/or service space for a limited period, which may or may not be a contract form.

**6.3** On formation of a cloud-solution agreement the other party accepts the applicability and the non-nullification of the licence conditions, insofar as they exist, that are supplied with the product by the manufacturer. The other party also accepts this if it first becomes aware of these or could have become aware of these after the formation of the agreement. The service offered to the other party by Flex IT Rent may only be used by a single user and for the other party's own use. The other party does not have the right to dispose of, encumber and/or make available on a professional basis or otherwise to third parties the user right granted to the other party under the agreement, whether in full or in part, unless agreed otherwise explicitly in writing.

**6.4** The period of the user right commences from the moment that the cloud solution and/or hosting is made available to the other party.

**6.5** The other party indemnifies Flex IT Rent, both during the term of the agreement and thereafter, against any form of liability relating to losses suffered or to be suffered by or on behalf of the other party in whatever form as a result of; faults, breach of intellectual property rights, the loss of data, functions and suchlike in the cloud and/or made available by Flex IT Rent which can be traced back to the original suppliers and/or manufacturer.

**6.6** At any moment that the other party acts or has acted in conflict with the agreement, the terms and conditions of use, the licence conditions and/or in conflict with the law and/or if the good name and reputation of Flex IT Rent is threatened then Flex IT Rent shall have the right on discovery of this by Flex IT Rent, the manufacturer and/or an appropriately authorised third party, to terminate the agreement with immediate effect and/or dissolve the agreement by extrajudicial means without the need for any further notice of breach and/or default. Flex IT Rent and/or its supplier has/have the right to delete the data and/or information itself or to block access to this, if there is evidence of potential conflicting actions by the other party as referred to above in this clause. Flex IT Rent cannot be held liable in any way whatsoever for any form of loss that the other party suffers as a result of the termination. However, in that case Flex IT Rent has the right to claim from the other party the losses that Flex IT Rent has suffered and/or will suffer in respect of both direct and indirect losses.

**6.7** Flex IT Rent is in no way liable whatsoever and in any form whatsoever for the loss of data and/or functionalities due to the use of the cloud solutions and/or hosting by and/or on behalf of the other party. The same applies after dissolution of the agreement, whether or not this is by means of termination.

**6.8** Neither Flex IT Rent nor its supplier and/or the manufacturer can be held liable in any way whatsoever and in any form whatsoever by and/or on behalf of the other party for breach of privacy and/or confidentiality when this is the result of providing assistance in response to a request from a body that is duly authorised by the government. The same applies in the event of corruption and/or loss of data and /or functionalities and confidentiality if this is the result of non-permitted actions by third parties.

**6.9** The other party undertakes to make timely backups of its activities in the purchased cloud solution and hosting service. Although Flex IT Rent is required to make the storage of data and the functionality available to the other party continuously it cannot be held liable in any way whatsoever and in any form whatsoever for faults (such as, for example – though not limited to – during maintenance) in the availability of the cloud solution and/or hosting and the loss and/or corruption of data and/or functionalities, even when these are not the result of force majeure such as, though not limited to, misadventure.

**6.10** Flex IT Rent has the right after termination of the agreement concluded between Flex IT Rent and the other party to delete/remove all data and functionalities from the systems and storage made available to the other party, without Flex IT Rent being held liable for this in any way whatsoever by the other party.

**6.11** Unless agreed explicitly otherwise in writing, all services purchased by the other party are covered by the “Fair Use Policy” (FUP) regime in operation by Flex IT Rent. This means that in the event of misuse of its services, for example a substantial excess of monthly band width transfer, Flex IT Rent shall have the right to charge the user / the other party for this financially by issuing extra invoices and/or by terminating the agreements with immediate effect or otherwise, without Flex IT Rent being held liable in any way whatsoever and in any form whatsoever.

**6.12** In the event of early termination by the other party, the other party shall be liable to pay the financial obligations during the remaining period of the earlier concluded agreement, without the other party being able to derive any rights from this.

**6.13** In the event of an extension, Flex IT Rent has the right to amend the price without prior (written) notice in the event that market conditions give rise to this. Flex IT Rent has the right to terminate the contract agreement by means of written notice up to one week before the end of the contract or its extension.

**6.14** If Flex IT Rent has concluded a contract agreement for a cloud solution and/or hosting with the other party this shall on each occasion be extended automatically by the same period without the need for prior notification, unless the other party has terminated the agreement in a timely manner. Termination by the other party must be notified at least 7 days before the end of a contract agreement which has a term of 3 months or less. For contract agreements longer than 3 months the notice period is 31 days before the end of the contract agreement. If the other party gives notice of termination in less than the stated notice period before the end of the contract agreement this shall not be legally valid in relation to preventing the automatic extension of the contract.

Flex IT Rent has the right to terminate the contract agreement by means of written notice up to and including one day before the end of the contract agreement or its extension.

## **APPENDIX 7: EQUIPMENT LEASING**

**7.1** The lease agreements between Flex IT Rent and the other party are, in principle, of an unlimited duration. The leased goods from Flex IT Rent must be inspected immediately upon receipt by or on behalf of the other party for – amongst other things, though not limited to – completeness, damage and functionality. If there is evidence of the aforementioned shortcoming the other party must notify Flex IT Rent of this immediately and explicitly in writing within one working day. If the other party fails to do this then it may no longer subsequently make a claim and the other party shall be deemed to have received the leased goods in good condition.

**7.2** Flex IT Rent guarantees in no way the compatibility of the leased goods with other equipment, software or other materials and/or the other party's intended use.

**7.3** Flex IT Rent has the right to request a security before entering into a lease. The amount of the security may never be used by the other party to offset other obligations, including rent owed to Flex IT Rent but not yet paid, unless this is agreed otherwise explicitly in writing.

**7.4** The other party is not permitted to allow third parties to undertake repairs and/or maintenance on the leased goods unless permission for this has been explicitly granted by Flex IT Rent in writing.

**7.5** If a defect, damage, theft, loss, malicious damage and (threatened) seizure is discovered the other party must notify Flex IT Rent of this immediately, stop using the goods and follow the instructions of Flex IT Rent.

**7.6** In the event of loss, theft or malicious damage then in addition to that which is stipulated in 7.16 of this Appendix, the other party must immediately following the discovery report this to the police and provide a copy of the official report to Flex IT Rent immediately after its receipt.

**7.7** If a breach by the other party is discovered by and/or on behalf of Flex IT Rent of that which is stipulated above in this Appendix under 7.4, 7.5 and 7.6 then Flex IT Rent shall have the right to impose a maximum penalty on the other party of 2,500 euro (in words; two thousand five hundred euro) for each breach. This shall be without prejudice to the right to terminate the agreement on an extrajudicial basis in full or in part and the right to recover losses as described in Article 10 of the general section of these terms and conditions.

**7.8** In the event of loss, theft or malicious damage or otherwise due to causes outside of normal use of the goods leased to the other party Flex IT Rent shall have the right to charge the other party the new value of or the new value of the replacement of those goods (in the event the original goods are no longer readily available) as a direct loss suffered. This shall be without prejudice to any other right vested in Flex IT Rent on the basis of consequential loss.

**7.9** If, with regard to that which is stipulated here under 7.16 and 7.17 in this Appendix, the other party remains in default then it shall also be liable for all consequential losses suffered by and/or on behalf of Flex IT Rent as a result of this omission.

**7.10** The other party must ensure adequate insurance in a timely manner and this must be provided to Flex IT Rent on first request.

**7.11** If at any moment during the lease it becomes evident to the other party that for whatever reason the leased information-carrier goods still contain information and that information is not intended for the other party, then the other party must notify Flex IT Rent of this immediately and assist Flex IT Rent in the removal of the relevant information. In that case, the other party shall handle the relevant information confidentially and not distribute it.

**7.12** During the term of the lease Flex IT Rent has at all times the right to check the condition and the method of use of the leased goods by the other party. On first request, the other party must grant Flex IT Rent immediate and unrestricted access to the leased goods.

**7.13** The other party indemnifies Flex IT Rent against all consequences relating to failure to meet the terms and conditions (whether or not in the form of a licence) of programs/software associated with the leased goods.

**7.14** The goods leased by the other party shall remain at the expense and risk of the other party (including for defects and/or damage) until the moment that the goods have been handed back to Flex IT Rent and Flex IT Rent has inspected the returned goods.

The other party is not only liable for the costs of repair but also for the direct and indirect losses that Flex IT Rent suffers as a result. Exceptions to the above are defects and damage as a result of failures demonstrably attributable to Flex IT Rent.

**7.15** If Flex IT Rent at any moment has to undertake repair, maintenance and/or support on the basis of its findings in relation to the goods leased by the other party, the conditions stated in the appendix relating to repair, maintenance and/or support shall also be applicable. Where Flex IT Rent's findings are the result of a fault attributable to Flex IT Rent then Flex IT Rent shall resolve this fault within a reasonable period of time or replace the relevant goods or issue a credit note, such being at its own discretion. In the aforementioned situations and for the consequences arising from this for and/or on behalf of the other party, Flex IT Rent is not liable towards and/or on behalf of the other party in any way whatsoever and in any form whatsoever.

**7.16** Without the explicit written permission of Flex IT Rent, the other party is not permitted to make changes to the leased goods, such as – for example, though not limited to – optical, aesthetic and/or functional changes. If changes are made by the other party without the aforementioned approval then Flex IT Rent shall have the right to terminate the lease agreement early on an extrajudicial basis, in full or in part, whilst retaining all financial rights that it may otherwise derive from the relevant agreement.

As a result of the aforementioned acts by the other party, Flex IT Rent has the right to recover from the other party all losses suffered and to be suffered by Flex IT Rent in any way and in any form whatsoever.

**7.17** Without the explicit written permission of Flex IT Rent, the other party is not permitted to locate the goods leased from Flex IT Rent and/or the materials obtained from Flex IT Rent for the benefit of the lease outside of the national borders. The other party is also not permitted to lease out, loan or otherwise transfer control to third parties of the goods leased from Flex IT Rent.

**7.18** If the other party's financial circumstances are such that there is a tax arrears situation in its obligations towards third parties the other party must notify this immediately to Flex IT Rent. If Flex IT Rent suffers losses due to an omission on the part of the other party with regard to that which is stipulated in this Article – such being at the discretion of Flex IT Rent – then Flex IT Rent shall have the right to recover such losses from the other party, whereby the value of the leased goods shall be equated to the new value.

**7.19** When taking back possession of the leased goods, including software, programs and suchlike, which have information carrier properties, Flex IT Rent shall not be liable to and/or on behalf of the other party in any way whatsoever for the loss of the information present in those leased goods, nor is Flex IT Rent responsible for storing and/or archiving this information.

**7.20** When taking back possession of the leased goods, Flex IT Rent has the right, also without being held liable by and/or on behalf of the other party, to remove and/or destroy the information present on the leased goods – in full or in part – at any moment at its discretion.

**7.21** The other party must ensure that when taking back possession of these goods, Flex IT Rent is provided with the required access codes such as, amongst other things, user names and passwords. If the other party fails to do this then Flex IT Rent shall have the right to charge the other party a daily rental for the relevant goods for each day that this situation continues, without the need for Flex IT Rent to issue notice of breach / default to the other party with regard to this. This shall be without prejudice to Flex IT Rent's right to recover from the other party all losses Flex IT Rent suffers and/or may suffer.

**7.22** With respect to a lease purchase agreement the other party may only take advantage of the purchase option provided it has met all of its obligations arising under the (lease) rental agreement.

**7.23** In the event of cancellation of the lease agreement by the other party up to 7 days before the commencement of the lease period the other party shall owe Flex IT Rent 50% of the total agreed rental sum. In the event of cancellation of the lease agreement by the other party within 6 days of commencement of the lease period the other party shall owe Flex IT Rent 100% of the total agreed rental sum. Cancellation of the lease agreement must always be made in writing.

**7.24** In the event of early termination by the other party, the other party shall be liable to pay the financial obligations during the remaining period of the earlier concluded agreement, without the other party being able to derive any rights from this.

**7.25** The equipment leased by the other party from Flex IT Rent must be handed over to Flex IT Rent immediately at the end of the term of the lease agreement in the same condition as at the start of the lease agreement. The handover must take place at Flex IT Rent's business address or at another business location specified by Flex IT Rent.

**7.26** For every day that the leased goods have not been handed over to Flex IT Rent after the end of the lease agreement, Flex IT Rent shall have the right to charge the other party a daily rental for this, without the need for Flex IT Rent to issue notice of breach / default to the other party with regard to this.

**7.27** If Flex IT Rent has concluded a lease agreement with the other party this shall on each occasion be extended automatically by the same period without the need for prior notification, unless the other party has terminated the agreement explicitly in writing in a timely manner. Termination by the other party must be notified at least 1 day before the end of a lease agreement which has a term of 3 months or less. For a lease agreement between Flex IT Rent and the other party longer than 3 months the notice period is at least 7 days before the end of the lease period. If the other party gives notice of termination in less than the stated notice period before the end of the lease agreement this shall not be legally valid in relation to preventing the automatic extension of the contract. Flex IT Rent has the right to terminate the lease agreement by means of written notice up to and including one day before the end of the lease agreement or its extension.

## **APPENDIX 8: ASSETS**

**8.1** In these terms and conditions "Assets" means; all automation and communication technology goods used and/or depreciated that Flex IT Rent buys or takes possession of free of charge from the other party.

**8.2** If Flex IT Rent concludes an asset agreement with the other party then Flex IT Rent has the right to regard the agreed purchase price as an indicative price as a result of an initial inventory of the specifications and delivery times supplied by the other party, without being obliged to issue any notice regarding that in advance to the other party.

**8.3** Flex IT Rent has the right to adjust the purchase price after its inspections if the quality and/or specifications does/do not correspond with the advance details provided to it by the other party.

**8.4** The inspection of the goods purchased as or regarded as “Assets” shall be undertaken during a period of approximately 4 to 8 weeks after they have arrived at the premises or at another location specified by Flex IT Rent. The authority to assess rests with Flex IT Rent. Flex IT Rent shall provide the other party with a copy of the inspection protocol on request.

**8.5** After the inspection Flex IT Rent shall notify the other party about the price adjustment by means of a valuation report. Nonetheless, Flex IT Rent has the right to immediately process the purchased “Assets” and or goods involved following inspection and prior to handing over the valuation report, unless it is agreed explicitly in writing that Flex IT Rent shall provide the other party with the opportunity to check the valuation report on the basis of the goods inspected by Flex IT Rent.

**8.6** The title to the goods purchased as “Assets” shall transfer from the moment the supply has taken place or at the moment of payment and/or settlement if this has taken place before supply.

**8.7** Simply and solely through the formation of an asset agreement the other party by that action confirms that the goods supplied by it and/or on its behalf as “Assets” are free, unencumbered and duty-free and have not been disposed of to third parties and/or otherwise transferred in security and are not the property of third parties. The other party indemnifies Flex IT Rent with regard to this.

**8.8** The other party also warrants to Flex IT Rent on the formation of the agreement that the relevant goods used comply with the qualifications agreed and meet all relevant legal requirements with regard to health, safety, the environment and quality.

**8.9** With the formation of the asset agreement the other party unconditionally agrees – on its own initiative or otherwise - to provide Flex IT Rent with assistance for any investigation by a duly authorised government body to establish a legal breach with regard to that which is supplied by the other party.

**8.10** The Asset goods purchased by Flex IT Rent from the other party or which are involved in the agreement must be free, unencumbered and duty-free. The other party indemnifies Flex IT Rent against any form of liability towards the other party and/or towards any related third party that concerns the goods purchased by Flex IT Rent from and/or on behalf of the other party and/or the goods that Flex IT Rent has acquired in a different manner from and/or on behalf of the other party.

**8.11** Unless agreed explicitly otherwise in writing, the other party must remove all software and/or data from the “Assets” purchased by Flex IT Rent. The other party indemnifies Flex IT Rent against all claims in relation to this, such as loss and disclosure of data. The other party is at all times responsible for data and/or software security and must make backups before proceeding with the delivery. Flex IT Rent cannot be held liable in any way and in any form whatsoever by and/or on behalf of the other party for the loss of data and/or software.

**8.12** When the removal of software and/or data is agreed with the other party this concerns an obligation to use best endeavours. Disputes relating to the quality and/or qualifications of the goods supplied by the other party as “Assets” shall not stand in the way of the performance of the service sold by Flex IT Rent to the other party and the other party’s obligations relating to the

service. It shall never give the other party the right to offset and/or not to purchase the service for those reasons.

**8.13** Unless agreed explicitly otherwise in writing, the delivery date for the Asset goods from the other party is a fixed delivery date. If the delivery date is exceeded Flex IT Rent shall then have the right to terminate the agreement without it being held liable for that by the other party.

**8.14** Flex IT Rent has the right – for its own reasons – to suspend the delivery after it has notified the other party of this prior to the delivery, and without Flex IT Rent being held liable for that by the other party.

**8.15** In the event of late delivery by and/or on behalf of the other party, Flex IT Rent shall have the right – in the event of a delay in excess of one week, to impose a penalty on the other party for every full and/or part week thereafter that the delay continues, such penalty amounting to 1% per week of the invoice value, whereby a part of a week must be regarded as a full week. This shall have no prejudice on Flex IT Rent's other rights arising from this failure.

**8.16** The other party is obliged to package the goods properly and in accordance with statutory instructions and the requirements specified by Flex IT Rent.

**8.17** The other party is obliged to include a packing note with the goods which states the name and the address of the other party, the purchase order number issued by Flex IT Rent, the delivery address and other information relevant for the delivery. The other party must state in writing in the agreement as well as on the packing note whether the goods are packed in return packaging. If Flex IT Rent arranges the transport, the other party shall enclose the delivery document with the goods and, for the remainder, adhere to the instructions from Flex IT Rent.

**8.18** After the products have been delivered, the other party is obliged to take back the packaging material and other materials used for transport insofar as these are not the property of Flex IT Rent and do not form part of the products. Flex IT Rent has the right at all times to return the packaging material to the other party at its expense and risk.

**8.19** Packaging material, instructions, specifications, drawings, models, other auxiliary materials and other goods made available by Flex IT Rent for the delivery remain the property of Flex IT Rent and must be returned as soon as possible after the products have been delivered. The other party undertakes to designate auxiliary materials as the property of Flex IT Rent and to ensure these are maintained in a good condition.

Flex IT Rent has the right to refuse the shipment if the other party has failed to meet the aforementioned obligations regarding packaging and transport of products, such being without prejudice to other rights.

**8.20** The other party likewise indemnifies Flex IT Rent against all civil and criminal aspects that would be or could be associated with the goods supplied by and/or on behalf of the other party prior to, during and after the formation of the agreement.

If at any moment it appears that the other party has acted in conflict with the above then Flex IT Rent shall have the right to cancel, terminate or suspend the relevant or all agreements with the other party. In addition, Flex IT Rent shall have the right to recover from the other party all losses suffered or to be suffered by Flex IT Rent, including the relevant invoices it has paid to the other party and to third parties, such being subject to a minimum of 150% of the invoice value.

**8.21** Where Flex IT Rent has sold a further service to the other party for the "Assets" it has purchased from the other party then this sale shall be regarded as a separate agreement even when both elements are referred to in an agreement. Such a service includes but is not limited to the removal of software and data.

**8.22** Where the removal of software and/or data is agreed with the other party, or when this is deemed necessary by Flex IT Rent in the interests of the work to be undertaken then this removal shall take place on the basis of the resources and knowledge it has available. Flex IT Rent cannot be held liable in any way whatsoever by and/or on behalf of the other party if at any subsequent

moment it appears that using the resources and knowledge available at that time it appears possible to recover the removed software and/or data in full or in part.

**8.23** The other party shall invoice any final purchase price after this has been accepted and notified by Flex IT Rent. Invoices must be drawn up properly and be itemised and must in any event contain, in addition to the information required under law, the following elements: Order number; VAT and Chamber of Commerce numbers of the other party; invoice date; Intrastat code; SWIFT code/BIC; a clear description of the products supplied stating the delivery date; the price excluding and including VAT; the amount of VAT to be paid.

For intra-Community transactions the other party must state the BTW exemption number on the invoice.

**8.24** Unless Flex IT Rent instructs otherwise in writing, the other party must send a single copy of the invoices electronically in PDF format to [accountspayable@infotheek.com](mailto:accountspayable@infotheek.com). If electronic transmission is not possible the other party must then send a single copy of the invoice to: *Infotheek t.a.v. Crediteurenadministratie, Postbus 527, 2300 AM Leiden*

**8.25 a.** Flex IT Rent shall pay the invoice on the basis of the following conditions; correct performance of that which is agreed (including these terms and conditions), receipt by Flex IT Rent of a correct invoice as described in these articles, receipt by Flex IT Rent of an Flex IT Rent “IT Asset Recovery” registration form completed by the other party. Payment will then be made no sooner than 45 days after receipt of the invoice.

**b.** Each (new) other party of Flex IT Rent in the context of asset agreements is obliged to register with Flex IT Rent using Flex IT Rent’s “IT Asset Recovery” registration form. Flex IT Rent assumes the correctness of the information contained on this form and shall, amongst other things, only make payments to the bank account stated on this form, irrespective of the information stated on the invoice.

**8.26** If the other party’s information stated on the form changes the other party must notify Flex IT Rent of this immediately. The registration form held by Flex IT Rent will then be cancelled and in that case the other party must provide Flex IT Rent with a new registration form.

**8.27** In the event of a breach and in the event the other party fails to comply with that stated on the “IT Asset Recovery” form Flex IT Rent shall always have the right to suspend and/or terminate – in full or in part - its ongoing obligations. In the event of a breach, that which is stipulated in this paragraph shall also apply to obligations under agreements that are separate from that breach.

## **APPENDIX 9: RETURN MATERIAL AUTHORISATION AND CONDITIONS.**

(elsewhere referred to as “RMA and conditions”)

### **Preliminary general provisions:**

**9.1 a.** Return Material Authorisation (hereinafter referred to as: RMA) means the written permission from Flex IT Rent to the other party for goods to be returned by and/or on behalf of the other party.

**b.** For all goods to be returned to Flex IT Rent by the other party, the other party must submit an authorisation request (hereinafter referred to as the: RMA Request) to Flex IT Rent. Acceptance of an RMA Request for processing does not mean the other party can derive any rights other than the fact that the other party has submitted an RMA Request.

**9.2** Flex IT Rent is free to decide whether and if it so wishes for what goods, etc., it will grant an RMA to the other party under any other conditions than those stated here in this appendix. The other party cannot derive any other rights from the issue of an RMA other than the fact that Flex

IT Rent has only agreed under the applicability of the “RMA and conditions” to the return of the goods stated on the RMA Request.

**9.3** The “RMA and conditions” means the conditions that the authorised goods must comply with before and during their shipment to Flex IT Rent.

**9.4** Unless agreed explicitly otherwise in writing, the “RMA and conditions” apply to all goods to be returned to Flex IT Rent. The goods eligible for RMA are subdivided into the following groups: A. Factory Guarantee and DOA, B. Flex IT Rent Guarantee, C. Out of Guarantee, D. Transport Damage, E. Trial and/or Display Goods. The term DOA “Death On Arrival” (not working on arrival) is only applicable for Factory Guarantee within the context of the “RMA and conditions”.

**RMA Request:**

**9.5 a.** The RMA must be preceded by a request from the other party sent exclusively by electronic means, consisting of a fully and correctly completed online RMA Request Form which is available from Flex IT Rent’s website. Insofar as the other party’s request relates to goods previously invoiced to the other party by Flex IT Rent then the RMA is limited to the goods listed on the relevant invoice sent by Flex IT Rent. It is not possible for goods from several different invoices to be included on the same RMA unless agreed explicitly otherwise in writing. In all cases, the other party must therefore enter the correct invoice number on the RMA Request Form.

**b.** Request Forms that are incomplete and/or unclear shall not be accepted by Flex IT Rent and Flex IT Rent shall in no way and in no form whatsoever be held liable for this by and/or on behalf of the other party.

**c.** When considering the RMA request from the other party, Flex IT Rent has the right to demand a copy of the relevant invoice. The inability to hand over the invoice can result in a rejection of the RMA Request or a delay in the handling of the RMA Request.

**Guarantee claim:**

**9.6 a.** When the other party wishes to return goods and the other party wishes to make a claim under the guarantee, Flex IT Rent advises the other party to investigate before making its RMA Request, whether the guarantee claim is covered by the terms of the guarantee. For a Factory Guarantee this is usually stated in the guarantee clauses. When a guarantee is issued by Flex IT Rent this will be stated in either the guarantee clauses or in Flex IT Rent’s general terms and conditions.

**b.** Unless agreed explicitly otherwise in writing, the commencement date of the guarantee for goods covered by a guarantee issued by Flex IT Rent is the delivery date stated on Flex IT Rent’s invoice. The guarantee shall lapse automatically at the end of the agreed guarantee period. In cases where no delivery date is stated on the invoice the date of the invoice shall apply as the commencement date of the guarantee period unless an earlier delivery date can be demonstrated from the proof of delivery, in which case the delivery date stated on the proof of delivery shall apply as the commencement date of the guarantee.

**A. Factory Guarantee and DOA:**

**9.7** If the other party wishes to return goods in relation to a Factory Guarantee claim then the other party must only contact the manufacturer directly for the processing and settlement of the claim unless, pursuant to Article 9.9, the other party is referred to Flex IT Rent by the manufacturer or unless otherwise agreed by the other party and Flex IT Rent.

**9.8** For goods purchased by and received by the other party in which there is a “Death On Arrival” (hereinafter: DOA) in respect of goods covered by a Factory Guarantee then the terms and conditions of the manufacturer shall apply insofar as they provide an applicable arrangement for this. The other party is obliged to report the DOA directly to the manufacturer and to follow the manufacturer’s instruction.

### **Factory Guarantee and DOA via Flex IT Rent's RMA procedure**

**9.9** In a number of cases the return of goods covered by a Factory Guarantee, or DOA, may only be undertaken after the explicit approval of Flex IT Rent and only by means of the RMA Request and under the applicability of the "RMA and conditions".

These specific cases are those in which the manufacturer has agreed with Flex IT Rent that the other party is to refer to Flex IT Rent for the handling (in part) of the Factory Guarantee/DOA claim, or in which Flex IT Rent has specifically agreed in writing with the other party that it will arrange any claim with the manufacturer under the Factory Guarantee /DOA (in part) on behalf of the other party.

**9.10** If the relevant goods have to be returned to Flex IT Rent because of a DOA pursuant to Article 9.9 of this Appendix the other party must always obtain a DOA Authorisation Form from the manufacturer first. The other party must then – within 5 working days after the date of the DOA Authorisation Form – submit an RMA Request with the DOA Authorisation Form appended.

**9.11** After obtaining an RMA for goods covered by a "Factory Guarantee" the other party must ensure that the goods are prepared for shipment in the manner described in Article 9.35.a of this Appendix and in the case of a DOA in the manner described in Article 9.35.b.

### **B. Flex IT Rent Guarantee:**

**9.12** If the other party wishes to return goods in relation to an "Flex IT Rent Guarantee" claim and/or it is deemed necessary by Flex IT Rent for the handling of the claim, then this shall only take place via an RMA Request and under the applicability of the "RMA and conditions".

**9.13** After obtaining an RMA for goods covered by an "Flex IT Rent Guarantee" the other party must ensure that the goods are prepared for shipment in the manner described in Article 9.36.a of this Appendix and in the case of a "Carry-in Guarantee" in the manner described in Article 9.36.b.

### **C. Outside of Guarantee:**

#### **Goods Supplied As Per Agreement:**

**9.14** If the other party wishes to return goods in relation to goods supplied "As Per Agreement" due to an incorrect order and suchlike then this can only take place after the explicit approval of Flex IT Rent and only by means of an RMA Request and under the applicability of the "RMA and conditions". Flex IT Rent is in no way obliged to approve the return of goods supplied "As Per Agreement". Products that do not or no longer form part of Flex IT Rent's product range, which are no longer available or obsolete and/or have been modified and no longer meet the wishes of the other party shall never be eligible for return and/or credit by Flex IT Rent. The same applies to, amongst other things, warranty packs, components, memories, software and suchlike.

**9.15** If the other party submits an RMA Request for Goods Supplied As Per Agreement and Flex IT Rent has granted an RMA in response to that then those goods, including all accessories, are to be returned to Flex IT Rent in an as-new condition, undamaged, without broken seals and in the original undamaged and unopened packaging and in accordance with the RMA and Flex IT Rent's instructions. In the event that damage has been caused by and/or on behalf of the other party that could have been prevented then Flex IT Rent shall charge a minimum of 10% of the sale price as compensation for the damage that has been caused.

**9.16 a.** The other party must submit an RMA Request for the return of goods to Flex IT Rent within a period of 5 days after the delivery date stated on the invoice.

**b.** In cases where no delivery date is stated on the invoice, the date of the invoice shall apply as the commencement date unless an earlier delivery date can be demonstrated from the proof of delivery, in which case the delivery date stated on the proof of delivery shall apply as the commencement date of the guarantee.

**9.17** In the event that Flex IT Rent grants an RMA following an RMA Request from the other party for Good Supplied As per Agreement and the goods are received by Flex IT Rent in accordance with the “RMA and conditions” and are accepted after processing then the costs of restocking and administration costs for that shall be charged to the other party. For unopened packaging of products the costs amount to 20% and for opened packaging 25% of the sale value, subject to a minimum of 60.00 euro (in words; sixty euro) per return (or product).

**9.18** After obtaining an RMA for goods covered by “As Per Agreement” the other party must ensure that the goods are prepared for shipment in the manner described in Article 9.36.a of this Appendix.

**Goods Supplied Not As Per Agreement:**

**9.19** If the other party wishes to return goods to Flex IT Rent in relation to goods supplied “Not As Per Agreement” then this can only take place after the explicit approval of Flex IT Rent and only by means of an RMA Request and under the applicability of the “RMA and conditions”.

**9.20** If the other party submits an RMA Request for Goods Supplied Not As Per Agreement and Flex IT Rent has granted an RMA in response to that and it is clearly identifiable from the outside of the packaging that this concerns Goods Supplied Not As Per Agreement, then those goods, including all accessories, are to be returned to Flex IT Rent in an as-new condition, undamaged, without broken seals and in the original undamaged and unopened packaging and in accordance with the RMA and Flex IT Rent’s instructions. In the event that damage has been caused by and/or on behalf of the other party that could have been prevented then Flex IT Rent shall charge a minimum of 10% of the sale price as compensation for the damage that has been caused.

**9.21 a.** The other party must submit an RMA Request for the return of goods to Flex IT Rent within a period of 5 days after the delivery date stated on the invoice.

**b.** In cases where no delivery date is stated on the invoice the date of the invoice shall apply as the commencement date unless an earlier delivery date can be demonstrated from the proof of delivery, in which case the delivery date stated on the proof of delivery shall apply as the commencement date.

**9.22** After obtaining an RMA for goods covered by “Not As Per Agreement” the other party must ensure that the goods are prepared for shipment in the manner described in Article 9.36.a of this Appendix.

**D. Transport Damage:**

**9.23** If the other party wishes to return goods to Flex IT Rent in relation to “Goods Supplied Suffering Transport Damage” then this can only take place after the explicit approval of Flex IT Rent and only by means of an RMA Request and under the applicability of the “RMA and conditions”.

**9.24** Transport-damaged goods shall only be eligible for an RMA on the basis of Transport Damage if the goods have been dispatched to the other party at the expense and risk of Flex IT Rent and there is evidence of transport damage. Insofar as the damage is deemed to be immediately visible on receipt then the damage must also be recorded on a carriage note/proof of delivery that is signed by or on behalf of the other party.

**9.25 a.** The other party must submit an RMA Request for the return of transport-damaged goods to Flex IT Rent within a period of 2 working days after the delivery date stated on the invoice.

**b.** In cases where no delivery date is stated on the invoice the date of the invoice shall apply as the commencement date unless an earlier delivery date can be demonstrated from the proof of delivery, in which case the delivery date stated on the proof of delivery shall apply as the commencement date.

**9.26** If the other party submits an RMA Request for Goods Supplied Suffering Transport Damage and Flex IT Rent has granted an RMA in response to that and it is clear from the outside of the

packaging that there is evidence of transport damage, then those goods – without causing further damage – including all accessories, are to be returned to Flex IT Rent without broken seals and in the original undamaged and unopened packaging and in accordance with the RMA and Flex IT Rent’s instructions. In the event of further damage that could have been prevented then Flex IT Rent shall charge a minimum of 10% of the sale price as compensation for the damage that has been caused.

**9.27** After obtaining an RMA for goods covered by “Transport Damage” the other party must ensure that the goods are prepared for shipment in the manner described in Article 9.36.a of this Appendix.

#### **E. Trial and/or Display Goods:**

**9.28** If the other party wishes to return goods to Flex IT Rent in relation to “Trial and/or Display Goods” then this can only take place after the explicit approval of Flex IT Rent and only by means of an RMA Request and under the applicability of the “RMA and conditions”.

**9.29** If it is agreed between Flex IT Rent and the other party that the other party is obliged to return the trial and/or display goods it receives from Flex IT Rent then the other party must submit an RMA Request within the period agreed with Flex IT Rent or within the notice period from Flex IT Rent. If no explicit period is agreed or in the case of the aforementioned notice, the RMA Request must then be submitted to Flex IT Rent within 5 days after the return shipment is agreed or the notice has been issued by Flex IT Rent.

**9.30** After obtaining an RMA for goods covered by “Trial and/or Display Goods” the other party must ensure that the goods are prepared for shipment in the manner described in Article 9.36.a of this Appendix.

#### **Other general provisions:**

**9.31** The transport of all goods to be returned by the other party under an RMA is to be arranged by Flex IT Rent with the exception of goods to be returned under the applicability of the Carry-in guarantee and goods in relation to which there is a DOA. In the aforementioned exceptions, the transport is to be arranged directly by the other party.

In those cases in which the other party arranges the transport the goods shall be transported at the expense and risk of the other party.

**9.32** Were Flex IT Rent arranges the transport the goods shall be transported at the expense and risk of the other party, with the exception of goods to which the Pick-up and return guarantee is applicable and the Goods Supplied Not As Per Agreement. For the Pick-up and return guarantee Flex IT Rent is specifically (and only) responsible for the transport costs ad for the goods supplied by Flex IT Rent Not As Per Agreement the costs as well as the transport risk are borne by Flex IT Rent.

**9.33** Unless explicitly agreed otherwise in writing, the goods accepted by Flex IT Rent under guarantee are in all cases held by Flex IT Rent and/or the third party it engages at the expense and risk of the other party.

**9.34** Flex IT Rent is in no way and in any form whatsoever liable to and/or on behalf of the other party for:

**a.** the deficiencies in packaging of the goods to be returned and the consequences that can arise as a result of that both during and after transport. Flex IT Rent is also not therefore responsible for inspecting the reliability of the packaging prior to and during transport. The other party remains independently responsible for the proper packing for transport of the return goods and is also obliged to implement the measures as described in Article 9.37.

**b.** the loss or the disclosure of information and/or functionalities on the goods referred to above in this Appendix for the duration that Flex IT Rent is holding and/or in possession of these goods, or

when these goods remain under its responsibility with a third party it has engaged. The other party remains independently responsible for the data security and is obliged to ensure adequate and timely storage of the aforementioned information and/or functionalities and is also obliged to implement the measures as described in Article 9.37.

**9.35** Flex IT Rent endeavours to complete the technical-administrative handling and issue of a credit note (if applicable) within approximately 10 working days after inspection in the stores of the goods received from the other party which are returned as “Outside of Guarantee” goods.

#### **Obligations of the other party**

**9.36 a.** Where Flex IT Rent issues an RMA to the other party, the goods for which Flex IT Rent organises the transport must be easily accessible on the ground floor and ready for transport no later than 5 working days after the issue date of the RMA (see under ‘Transport’ Article 6 of the general section) but in any event at the moment of collection by or on behalf of Flex IT Rent.

**b.** Where Flex IT Rent issues an RMA to the other party in relation to a DOA or Carry-in Guarantee, the goods for which the other party organises the transport must be received by Flex IT Rent at the address instructed by Flex IT Rent within 5 working days after the issue date of the RMA.

**9.37** After obtaining an RMA from Flex IT Rent the other party is obliged to implement the following measures for the return of goods in accordance with the RMA and conditions:

- The other party must make a backup of the data and/or functionalities insofar as the return concerns information carrier goods;
- The other party must ensure the required proper transport packaging as specified above in this Appendix;
- Toners, and paper in the paper drawer and suchlike must be removed;
- Bios passwords must be provided to Flex IT Rent;
- Access security, such as passwords, pin codes and suchlike must be removed.

**9.38** Prior to transport the other party is obliged to attach the RMA Authorisation Form it receives from Flex IT Rent to the outside of the (transport) packaging in a clearly visible position and in a proper manner; therefore also in those cases in which transport is to be arranged directly by the other party.

#### **Rights of Flex IT Rent**

**9.39 a.** Flex IT Rent has the right and shall (generally) apply this right to refuse and/or return goods that are not returned to Flex IT Rent in accordance with Flex IT Rent’s instructions and/or RMA conditions and/or in cases where the condition of the goods returned by the other party and/or the packaging of those goods gives cause, such being without Flex IT Rent being held liable in any way whatsoever by and/or on behalf of the other party. The return by Flex IT Rent to the other party referred to shall be undertaken at the expense and risk of the other party, including any costs for re-packing.

**b.** If, despite this, Flex IT Rent accepts the goods returned to it with regard to which the condition and/or the packaging is defective then Flex IT Rent shall have the right to adjust the price correspondingly in the event that a credit is agreed.

**9.40** Where the other party returns goods to Flex IT Rent that are in conflict with Flex IT Rent’s instructions and/or the RMA conditions and/or after it becomes evident following inspection of the returned goods that the reason Flex IT Rent issued the RMA was unfounded, for example in the case that there is no evidence of; Guarantee, DOA, Goods Supplied Not As Per Agreement and suchlike – such being at the discretion of Flex IT Rent – then Flex IT Rent shall have the right to also charge the other party investigation and/or handling costs and suchlike, in addition to any shipping costs for returning the goods to the other party, subject to a minimum of 50.00 euro (in words; fifty euro) per return (or product).

**9.41** Where Flex IT Rent issues an RMA for goods to be returned by the other party for which a Factory Guarantee applies or applies in part, then Flex IT Rent shall have the right to include –in full or in part - the terms and conditions and procedure specified at that time for the return by the manufacturer as a condition for granting an RMA.

**9.42** The aforementioned rights apply without prejudice to all other rights that Flex IT Rent has under the law and that which is stipulated in these general terms and conditions.

## **APPENDIX 10: GENERAL GUARANTEE TERMS**

**10.1** Unless the period is agreed explicitly otherwise in writing, the guarantee period for a guarantee issued by Flex IT Rent is a maximum of 3 months immediately following the date of delivery of the relevant goods, as stated on the invoice. The guarantee shall lapse automatically at the end of the agreed guarantee period.

In cases in which no delivery date is stated on the invoice the invoice date shall be regarded as the commencement date for the guarantee period unless an earlier delivery date can be demonstrated from the proof of delivery, in which case the delivery date stated on the proof of delivery shall apply as the commencement date of the guarantee.

**10.2** Unless agreed explicitly otherwise in writing and/or instructed otherwise by Flex IT Rent, Flex IT Rent shall only consider a guarantee claim from the other party for goods supplied under its own guarantee when the relevant goods have been returned to Flex IT Rent by the other party and a Return Request has been submitted for this within the guarantee period. The return can only take place by means of an RMA Request and under the applicability of the “RMA and conditions” as described in Appendix 9.

**10.3** There can never be a double guarantee situation. In the event, for whatever reason, a double guarantee has been issued; one from the manufacturers and one from Flex IT Rent, then the only applicable guarantee shall be the Factory Guarantee. In that case, the other party cannot derive any rights from the guarantee provided by Flex IT Rent for the period during which both guarantees have been issued.

**10.4** The other party cannot derive any rights from the consideration of a claim and the method of handling a guarantee claim or from the approval of the RMA Request by Flex IT Rent.

**10.5** A claim by and/or on behalf of the other party under a guarantee provided by Flex IT Rent shall not interrupt the guarantee period. For future purchases, whether similar or not, no rights can be derived by and/or on behalf of the other party from a guarantee provided by Flex IT Rent, even when a guarantee was/will be provided to third parties.

**10.6.** When a guarantee is provided by Flex IT Rent and the other party makes a claim under that then it can only be determined whether the complaint is covered by the applicability of the guarantee after definitive establishment of the nature of the complaint by Flex IT Rent.

**10.7** If the claim is not covered by the scope of the guarantee and Flex IT Rent has – on the request of and/or on behalf of the other party – supplied replacement products to the other party before the definitive establishment, then Flex IT Rent shall have the right to charge the other party for the costs of the replacement product for the duration it is in the possession of the other party, including the costs of return transport, which shall equate to Flex IT Rent’s normal rental that is applicable for that product.

**10.8** Flex IT Rent shall have the right to also charge the other party the extra investigation and/or handling costs it has incurred for an unjustified claim by the other party under a guarantee provided by Flex IT Rent, in addition to any shipping costs, subject to a minimum of 50.00 euro (in words; fifty euro) per return (or product).

**10.9** Insofar as not agreed explicitly otherwise in writing between Flex IT Rent and the other party, for a guarantee provided by Flex IT Rent the other party shall arrange the transport to and from Flex IT Rent for the goods to be sent under a guarantee claim and this shall be at the risk and expense of the other party (so-called Carry-in Guarantee).

**10.10** Insofar as not agreed explicitly otherwise in writing, for a guarantee provided by Flex IT Rent, Flex IT Rent shall only arrange the transport to and from Flex IT Rent for goods to be sent under a guarantee claim (so-called Pick-up & Return Guarantee). In that case, Flex IT Rent shall - with the exclusion of the transport risk - only pay the costs of the transport.

**10.11** The goods for which a claim under the guarantee is made and any replacement goods, if that is the case, shall be transported at the expense and risk of the other party. Amongst other things, this means that when shipping those goods to Flex IT Rent or to its supplier, directly or indirectly, this is to be undertaken on a carriage-paid basis and when the goods are sent to the other party by Flex IT Rent this is to be undertaken on an ex-works basis from its premises or from another location determined by Flex IT Rent.

**10.12** The guarantee provided by Flex IT Rent concerns an obligation to use best endeavours and can include repair or replacement (by equivalent or functionally equivalent goods), or full or partial credit for the relevant goods, such being at the discretion of Flex IT Rent.

**10.13** By complying with one of the activities referred to above under point 10.12 Flex IT Rent shall have discharged its guarantee obligations in full.

**10.14** The right to a guarantee claim under a guarantee provided by Flex IT Rent shall lapse when the guarantee claim – in Flex IT Rent’s opinion – is based on a spurious request or a suspicion of such; for example though not limited to, if:

- Something has been changed, crossed out, deleted or made illegible on the invoice.
- The model (type) or production (batch) number has been changed, crossed out, deleted or made illegible on the product.
- Repairs or modifications have been undertaken by non-authorized (service) organisations or persons.
- There has been a case of improper use.
- There is a defect that is the result of external contingencies such as, though not limited to, lightning strike, flooding, fire, negligence, incorrect or improper use, inexperienced use, use in an environment that is unsuitable for the product, exposure to extreme temperature and peak voltage and damage caused by animals.
- There is a defect that has been caused by connected peripheral equipment, accessories or consumables that are not specified by the manufacturer.
- There is a defect that has been caused by software or configuration problems.
- The product has been overloaded.
- The product defect is the result of normal wear and tear of replaceable components.
- The product is being used in a country for which it has not been designed, produced or approved and as a consequence for example (though not limited to this) it fails to comply with local or national technical standards that are in force.
- The goods to which the guarantee request related have been resold.
- The other party is in default or breach in any way whatsoever towards Flex IT Rent.

**10.15** Software and consumables such as for example (though not limited to) batteries, toner cartridges, printer ribbons, ticket rollers, disk packs and memory carriers shall never be covered by the guarantee provided by Flex IT Rent.

**10.16** Flex IT Rent is not obliged to provide replacement goods to the other party during the period that Flex IT Rent is holding goods that have been returned under a guarantee that it has provided. Where such goods are made available to the other party they are not covered by the guarantee.

**10.17** Products or product components that are replaced pursuant to a guarantee provided by Flex IT Rent shall remain the full property of Flex IT Rent as a result of a guarantee provided.

**10.18** Unless agreed explicitly otherwise in writing, goods accepted for repair under guarantee shall remain in all cases with Flex IT Rent or with a third party engaged by Flex IT Rent at the expense and risk of the other party.

**10.19** Flex IT Rent is in no way and in any form whatsoever liable to and/or on behalf of the other party for the loss or the disclosure of information and/or functionalities on the goods referred to above in this Appendix for the duration that Flex IT Rent is holding and/or in possession of these goods, or when these goods remain under its responsibility with a third party it has engaged. The other party remains independently responsible for the data security and is obliged to ensure adequate and timely storage of the aforementioned information and/or functionalities.

**10.20** Flex IT Rent shall never be liable under a guarantee claim made correctly or otherwise by and/or on behalf of the other party for obligations that extend beyond those described above in this Article. Flex IT Rent is not therefore also liable for any form of loss that was and/or shall be suffered by and/or on behalf of the other party.

**10.21** The guarantee provided to the other party by Flex IT Rent shall be cancelled automatically at the moment the other party disposes of the relevant goods to third parties and/or transfers them for use by third parties.

© copyright “De Incassokamer B.V.”  
Version: April 2006