



**marketgraph**

**GENERAL CONDITIONS  
MARKETGRAPH**

Version AV.3/2010

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## 1. GENERAL

### 1.1 Applicability

1.1.1 These conditions are applicable to all proposals and/or deliveries made by Marketgraph and agreements and/or other legal relationships between Marketgraph and Customer, the resulting provisions and related activities regardless of whether or not they are based on a verbal, written and/or electronic agreement, unless otherwise agreed upon in writing.

1.1.2 **Purchase conditions or any other conditions used by Customer will not be applicable.** The applicability of purchase conditions or any other conditions from Customer or from third parties on behalf of Customer is therefore expressly rejected by Marketgraph, unless explicitly accepted in writing by Marketgraph.

1.1.3 The General Conditions Marketgraph is filed with the Chamber of Commerce Gooi and Vechtstreek under number 30178714.

1.1.4 Marketgraph reserves the right to make alterations and/or additions to the General Conditions Marketgraph. The modified General Conditions Marketgraph will become applicable, unless objections against modifications are made in writing within 30 (thirty) days of the notification date of the change.

1.1.5 Changes in and additions to the General Conditions Marketgraph and/or agreements made between Marketgraph and Customer are only valid when agreed to by Marketgraph in writing.

### 1.2 Definitions

1.2.1 In the General Conditions Marketgraph the following words and expressions are used with a capital. Any of the following words and expressions shown in the singular shall have the same meaning when used in the plural and vice-versa.

1.2.2 Advance:  
The right to charge payments in advance of the commencement of activities.

1.2.3 Customer:  
Anyone who requests and orders the delivery of Services.

1.2.4 Error:  
Error(s) means the failure to fulfill the functional specifications set down in writing by Marketgraph and, in cases of developing custom work, the functional specifications expressly agreed upon in writing. An Error only exists where such can be demonstrated and reproduced.

1.2.5 Fixed Price:  
An agreement to perform activities based on a prior agreed upon price.

1.2.6 Maintenance:  
As further described in article 2.3.

1.2.7 Marketgraph:  
Marketgraph and its rightful successors or affiliated organizations and partners that will enter into an agreement with Customer and has declared the General Conditions Marketgraph applicable.

1.2.8 Marketgraph Services:  
All services and products, including but not limited hardware, software, content and music, provided by Marketgraph and the resulting provisions and related activities, which do not originate from third parties and whose intellectual property rights, industrial property rights and other rights are held by Marketgraph.

1.2.9 Services:

All Marketgraph Services and/or Third Party Products provided by Marketgraph, the resulting provisions and related activities.

1.2.10 Subsequent Calculation:  
On conclusion of the activities carried out, all costs and expenses actually incurred related to the activities will be calculated and charged.

1.2.11 Support:  
Support consists of providing verbal (telephonic) and written (e-mail) advice concerning the use and operation of Services.

1.2.12 Third Party General Conditions:  
Third Party General Conditions are amongst others understood as the delivery conditions, license conditions, warranty conditions or other conditions maintained by a third party.

1.2.13 Third Party Products:  
All products and services provided by Marketgraph, the resulting provisions and related activities, which originate from third parties and whose intellectual property rights, industrial property rights and other rights are not held by Marketgraph.

1.2.14 Workdays:  
Normal Dutch working hours (8.30-17.30) and days (Monday through Friday) with the exception of public holidays.

### 1.3 Confirmation

1.3.1 Verbal agreements, assignments or other expressions of whatever nature by employees of Marketgraph are only valid and binding when they have been confirmed in writing by authorized representatives of Marketgraph.

### 1.4 Offers

1.4.1 All offers are made free of obligation, unless the offer explicitly indicates otherwise in writing.

1.4.2 Offers are based on the data, information or requirements made known by Customer as set out in article 1.6.

### 1.5 Agreements

1.5.1 If a proposal, contract or other similar legally binding document is sent by Marketgraph to Customer and Customer fails to return this document, signed, to Marketgraph, Customer accepts by payment of compensation to Marketgraph the contents of that document and the General Conditions Marketgraph.

1.5.2 An agreement between Marketgraph and Customer, for which no further contract and/or term has been agreed, has a term of 1 (one) year if the delivery concerns a Service such as but not limited to Maintenance and Support, for which a periodic fee is charged. If this agreement is not terminated or not terminated in time, it is extended repeatedly in increments of 1 (one) year.

1.5.3 Termination of the agreement as described in article 1.5.2 occurs by means of a registered letter, which must be received by the other party no later than 60 (sixty) days prior to the expiration date of the agreement.

1.5.4 Each party has the right to terminate the agreement wholly or partially without judicial intervention by means of a signed registered letter. This can be done if, after notifying the breaching party in writing of a failure to fulfill their obligations, they then fail to meet the aforesaid obligations within a reasonable period of time.

1.5.5 Marketgraph has the right to immediately terminate the agreement wholly or partially without judicial intervention through means of a non-judicial declaration and/or withdraw and/or annul an offer if bankruptcy or suspension of payment has been filed for Customer, if Customer is in

- a state of bankruptcy or suspension of payment has been granted or if Customer's company is liquidated or ended for any reason other than reconstruction or company merger. In these cases, any claim by Marketgraph will be immediately due.
- 1.5.6** After the agreement has been ended, for any reason, Customer can no longer obtain any rights provided by the agreement, leaving unhindered the existence of the obligations of both parties which by their nature continue automatically after the conclusion of the agreement, such as but not limited to, obligations concerning property rights, confidentiality and competition clause.
- 1.6 Co-operation/Information Requirements For Customer**
- 1.6.1** All assignments are carried out by Marketgraph on the basis of data, information, requests and/or requirements made known to Marketgraph by Customer.
- 1.6.2** Customer shall provide all necessary cooperation to Marketgraph and shall make known in time all useful and necessary data and/or other information required for an adequate execution of the agreement. Customer shall ensure the accuracy of this data and/or other information.
- 1.6.3** If data, information and/or requirements necessary for execution of the agreement are not in time, and/or not in accordance with the agreements, and/or not made available to Marketgraph, or if Customer fails to meet its obligations in any other way, Marketgraph has in any case the right to terminate or dissolve the agreement or to suspend execution of the agreement and Marketgraph has the right to charge the costs incurred at its usual rates.
- 1.6.4** If changes and/or new facts arise in regard to data, information, requests and/or requirements provided earlier by Customer, Marketgraph will always be fully justified in consultation with Customer to adjust the agreement to these new circumstances or to dissolve or annul the agreement.
- 1.6.5** If Customer makes functional improvements or any other adjustments in the Services (after first having received written permission from Marketgraph), Customer is obliged to report such adjustments to Marketgraph.
- 1.6.6** In the event Marketgraph performs activities on a location other than its own, Customer will be responsible for providing free of charge reasonable requested facilities, such as office space and telecommunication facilities.
- 1.7 Confidentiality/Non-competition**
- 1.7.1** Marketgraph and Customer mutually commit themselves to the confidentiality of all data and information concerning each other's organization, clients, files and the Services, of which they become aware while working for each other or for Customer's clients. Data and information may only be used in order to carry out the agreement between parties.
- 1.7.2** Marketgraph is authorized to place the name and logo of Customer or Customer's clients who are given rights to the Services on the Marketgraph website and/or reference list and to make them available to a third party for information.
- 1.7.3** Customer and its clients will not enter into any direct or indirect commercial, employment or other such relations with employees from Marketgraph during the agreement and for a period of 12 (twelve) months after termination or dissolution of the agreement, without the written consent of Marketgraph.
- 1.7.4** In the event that Customer breaches article 1.7.3, Customer will be charged, without further notification required, a fine of Euro 50.000,- (fifty thousand) for each breach, undiminished the right of Marketgraph to claim full compensation for damages incurred.
- 1.8 Liability**
- 1.8.1** Marketgraph's total liability due to culpable failure to fulfill the agreement, shall be limited, in accordance with this article, to compensation for direct damage and to a maximum of the amount as actually paid by Customer over 1 (one) calendar quarter (this being the quarter in which the damage occurred) to a maximum of Euro 50.000,- (fifty thousand), whereby a sequence of events is regarded as one event.
- 1.8.2** Nothing in this article shall be interpreted as limiting Marketgraph's liability in the case of malicious intent (*opzet*) or conscious recklessness (*bewuste roekeloosheid*).
- 1.8.3** Marketgraph's total liability for damage resulting from death or physical injury will in no event amount to more than Euro 1.000.000,- (one million), whereby a sequence of events is regarded as one event.
- 1.8.4** Direct damage is exclusively understood as:
- The reasonable expenses which Customer would have to incur to make Marketgraph's performance conform to the agreement; this alternative damage shall not be compensated, however, if the agreement is rescinded by or at the suit of Customer;
  - The reasonable costs made in determining the cause and extent of the damage;
  - The reasonable costs incurred in prevention or limitation of damage, to the degree that Customer can demonstrate that these costs have led to the limitation of the damage.
- 1.8.5** Marketgraph's liability for indirect damage, including consequential damage, loss of profit, loss of savings, mutilated and/or lost data, delays, damage as a result of a failure of Customer to provide the required information or assistance, damage through corporate inactivity and/or claims from third parties against Customer, is expressly rejected.
- 1.8.6** Marketgraph's liability exists solely when Customer immediately and appropriately notifies Marketgraph of the deficiency in writing, proposing therein a reasonable time period for correction of the deficiency and Marketgraph then culpably fails to meet the aforesaid obligations. The notification of deficiency ought to be as detailed a description of the deficiency as possible so that Marketgraph is able to react adequately.
- 1.8.7** The condition for the existence of any right to compensation is always that Customer notifies Marketgraph in writing within 60 (sixty) days after the damage came into existence, by registered mail, and takes the necessary measures to limit the damage as much as possible.
- 1.8.8** Customer indemnifies Marketgraph from all liability regarding third parties due to allegations as a consequence of deficiency in a product, system or service provided by Customer to third parties that consisted of a delivery made by Marketgraph.
- 1.8.9** Marketgraph does not accept any liability for damage regardless of its nature caused by Third Party Products which Marketgraph has delivered to Customer. If possible Marketgraph will transfer its rights for damage compensation from the supplier of the Third Party Product in question to Customer.
- 1.8.10** Marketgraph is not liable for any damage regardless of its nature, which is the result of a failure to provide Maintenance and/or Support on time, unless otherwise agreed upon in writing.
- 1.9 Transfer**
- 1.9.1** The agreement between Marketgraph and Customer and the rights and obligations, which flow forth from this

agreement, cannot be transferred to a third party by Customer without the prior written consent from Marketgraph.

**1.9.2** Customer gives Marketgraph in advance the right, without needing the explicit approval of Customer, to transfer the whole agreement or parts thereof to:

- a) Holding-, sister-, and/or subsidiary companies; or
- b) A third party in the case of merger or acquisition of Marketgraph.

**1.9.3** In the event of the above happening, Marketgraph will inform Customer of such.

## **1.10 Force Majeure**

**1.10.1** Neither party is obligated to fulfill any obligation if they are prevented from doing so as a result of circumstances, which can be considered beyond their fault, and by law, legal act, or generally accepted practices cannot be held accountable for. The aforementioned circumstances include circumstances that are beyond Marketgraph's power as well as business risks of Marketgraph, these include but are not limited to failure to perform by a supplier of Marketgraph, problems with telephone lines, the Internet or the SMS/MMS gateway and/or other networks for which Marketgraph is not responsible, the late or non-availability of required information and specifications and/or changes in such information, incorrect functional specification of Third Party Products and/or products delivered by a third party, bad weather conditions, fire, explosions, electricity failures, network failures, floods, illness, lack of staff, strike or other employment conflicts, accidents, actions by the government, not being able to obtain required licenses and/or permits, lack of materials, theft, traffic disruptions and/or transportation problems.

**1.10.2** When force majeure is of a temporary nature, Marketgraph has the right to suspend its commitments until the force majeure has ceased to exist without being obliged to any form of damage compensation.

**1.10.3** Marketgraph reserves the right, in the case of force majeure, to collect payment for obligations already fulfilled before force majeure was known.

**1.10.4** In the event that force majeure of either party surpasses a three month period, either party has the right to terminate the agreement without being obliged to any form of damage compensation regarding such termination.

## **1.11 Nullity**

**1.11.1** If one or more terms (or part of a term) of the agreement are nullified, declared to be nullified, annihilable or have lost their validity in another way, the other terms (or part of the term in question) of this agreement will remain in force undiminished.

**1.11.2** In regard to terms (or part of the term) that are nullified, declared to be nullified, annihilable or lose their validity in another way, parties shall consult with each other to try to reach a substitute arrangement within which the parties shall strive for the maintenance of this agreement (or the remainder of the term in question) in its totality.

## **1.12 Compliance with Laws and Regulations**

**1.12.1** Customer shall comply with all local regulations concerning marketing and sales and with any other conditions binding upon it in any licenses, registrations, permits and/or approvals necessary for the execution of the agreement and/or provision of the Services.

**1.12.2** Customer shall give Marketgraph as much advance notice as possible of any prospective or actual changes in the local regulations or any prospective or actual change in any condition in any license, registration, permit or

approval of which Customer becomes aware and which may cause Marketgraph to amend the Services provided to Customer.

## **1.13 Applicable Law and Dispute Mechanism**

**1.13.1** All agreements made between Marketgraph and Customer is governed by the laws of The Netherlands, unless otherwise agreed upon in writing.

**1.13.2** Any disagreement between parties because of any agreement will be placed before a qualified court in Utrecht, The Netherlands.

## **2. Marketgraph Services**

### **2.1 User Rights**

**2.1.1** Customer is granted the non-exclusive right to use the Services, including any products provided by Marketgraph as an integral part of the Services and corresponding documentation, only for the purposes as indicated in an agreement.

**2.1.2** User rights for software products are limited to the object code. Rights to the source code are not provided, unless explicitly agreed upon otherwise in writing.

**2.1.3** All content contained within the Service, such as but not limited to text, images, and music, may not be used by Customer outside the purpose as indicated in an agreement without prior written approval of Marketgraph.

**2.1.4** It is prohibited for Customer directly or indirectly (through a third party) to copy, duplicate or alter the Services in any way, without the prior written approval from Marketgraph.

**2.1.5** User rights on the Services cannot be transferred to any third party (third parties also include holding-, sister- and/or subsidiary companies).

**2.1.6** Customer does not have the right to make the Services available, under any title or in any way whatsoever, to any third party (third parties also include holding-, sister- and/or subsidiary companies), except for as specifically described in the agreement.

**2.1.7** The extent of the user rights on Third Party Products is determined by the Third Party General Conditions as described in article 3. Where the foregoing does not deviate from the Third Party General Conditions, the foregoing will also be applicable.

### **2.2 Hardware**

**2.2.1** Marketgraph may place hardware on Customer's business premises in order to carry out the agreement. The hardware may only be used by employees of Marketgraph, unless otherwise agreed upon in writing. The property rights in the hardware shall not be transferred to Customer, unless otherwise agreed upon in writing.

**2.2.2** Customer shall insure the hardware while it is located on Customer's business premises for a minimum of theft and property damage. Marketgraph shall indicate the minimum insurance requirements to Customer prior to placing the hardware at Customer's business premises.

**2.2.3** Customer is not allowed to move the hardware from the location it is placed in by Marketgraph without Marketgraph's prior approval. Marketgraph is entitled to place conditions on its approval. In the event that Customer moves the hardware without the prior approval of Marketgraph, Customer shall be responsible for any damage to the hardware.

**2.2.4** Customer shall not allow any third parties to use the hardware and shall ensure that the hardware is not included in any manner in the assets of Customer for, amongst others, the pledging of assets by Customer.

**2.2.5** Customer shall protect the hardware from theft or other possible negative influences, as if the hardware were

- Customer's own property.
- 2.2.6** The hardware shall be returned to Marketgraph in the same state as it was in at the time of placing the hardware on Customer's business premises. In the event that the hardware is not in the same state, then Customer shall pay Marketgraph compensation on the basis of the initial purchase price of the hardware minus the market value of the hardware.
- 2.3 Maintenance**
- 2.3.1** Marketgraph shall provide Maintenance on the Services delivered as per the terms and conditions of this article 2.3 unless otherwise agreed upon by parties in writing.
- 2.3.2** Maintenance of the Services is based on a periodic Advance. Maintenance includes the provision of updates to the Services and the repair of Errors in the Services.
- 2.3.3** The updates and documentation of the licensed Services delivered to Customer contain either a qualitative (e.g. Error fix) or a functional improvement of the Service that has been previously made available. Marketgraph is not obliged to actively keep Customer up-to-date concerning possible updates of the Services.
- 2.3.4** If Maintenance results in a functional improvement or addition to the Services, Marketgraph will have the right to charge extra payment to compensate for this functional improvement.
- 2.3.5** Marketgraph is authorized to refuse the provision of Maintenance if the Services provided by Marketgraph or the environment in which the Services operate are altered by Customer in any way or form without the prior authorization of Marketgraph.
- 2.3.6** Marketgraph shall strive to repair any Errors, to the best of its ability, during the term of the agreement provided these Errors have been reported in detail in writing to Marketgraph. At its sole discretion Marketgraph is entitled at its expense to repair, modify or replace the Services.
- 2.3.7** After Customer has notified Marketgraph of a problem in writing, electronic format or by telephone, Marketgraph will take the necessary steps which will lead to or could lead to a solution.
- 2.3.8** Marketgraph is entitled to invoice its usual prices and the costs for repair, modification or replacement of the Services if the Error may be said to be caused by mistakes made by the Customer, the result of improper and non-careful use by the Customer, the result of other causes that may not be attributed to Marketgraph or if Customer could have reasonably detected the Error during the acceptance period.
- 2.3.9** The reconstruction and/or repair of mutilated and/or lost data and/or information shall always be performed on the basis of Subsequent Calculation.
- 2.3.10** Marketgraph does not warrant that the Services shall function without interruption or without Errors, are suitable for every intended use of Customer and/or will lead to results desired by Customer.
- 2.4 Support**
- 2.4.1** Marketgraph shall provide Support on the basis of a periodic Advance.
- 2.4.2** Customer can contact Marketgraph regarding Support 24 hours a day, seven days a week. All Support activities performed by Marketgraph will be performed during Workdays. On request of Customer, Support can be provided outside of Workdays against an additional fee.
- 2.5 Outsourcing**
- 2.5.1** Employees of Marketgraph can be made available to Customer on a temporary basis for the performance of the agreement between parties.
- 2.5.2** Outsourcing is performed by Marketgraph on the basis of a specified agreement.
- 2.5.3** Marketgraph guarantees that the employees made available to Customer have an adequate level of education, expertise and experience to perform the duties as agreed upon in the agreement.
- 2.5.4** Marketgraph is free to replace the employees initially provided to Customer. Marketgraph shall ensure that the replacements have sufficient level of education, expertise and experience to perform the duties as agreed upon in the agreement.
- 2.5.5** Parties shall agree to the duration of the outsourcing in the agreement. All outsourcing activities will be performed during Workdays. On request of Customer, activities can be performed outside of Workdays against an additional fee.
- 2.5.6** Intellectual property rights, industrial property rights, and other rights to work resulting from outsourcing remain at all times with Marketgraph, as described in article 6.1.
- 2.6 Development Work**
- 2.6.1** Parties shall specify in writing what will be developed and how this shall be done. Marketgraph will carry out the development activities with due care on the basis of information provided by Customer, for which information Customer ensures the accuracy, completeness and consistency.
- 2.6.2** Marketgraph is authorized, but not obliged, to investigate the correctness, completeness and/or consistency of the data or specifications provided to Marketgraph and, in case it is determined that there is inaccuracy, incompleteness or inconsistency, to suspend activities until such time as Customer has remedied the deficiencies.
- 2.6.3** The development work takes place according to the following primary phases:  
a) Functional design phase.  
b) Technical design phase.  
c) Development of modules phase.  
If Customer does not wish to follow the foregoing phases this will be at the risk (and expense) of Customer.
- 2.6.4** A deviation of 10% in the prices mentioned will be deemed to be accepted by Customer and will not require further notification to and/or approval by Customer.
- 2.6.5** Intellectual property rights, industrial property rights, and other rights to custom work remain at all times with Marketgraph, as described in article 6.1.
- 2.7 Additional Work**
- 2.7.1** If in the opinion of Marketgraph, a change request by Customer is in fact a request for additional work, Marketgraph will notify Customer thereof prior to performing additional work. Upon request by Customer, the notification will be followed by a specification of the price and additional conditions. Customer will decide as soon as possible whether to carry out the additional work.
- 2.7.2** It will be assumed that Customer has agreed to the performance of additional work and the connected costs, if Customer has allowed additional work to take place without raising objections in writing prior to the commencement of additional work.
- 2.8 Advice**
- 2.8.1** All Services that can be considered advice or which can be described as advice will be given to the best of Marketgraph's knowledge and capability.
- 2.8.2** Marketgraph is not responsible and/or liable if the activities that follow forth from advice result in a failure to carry out a project for Customer within allocated budgets, time

schedules and other agreed upon conditions.

- 2.8.3** Marketgraph will provide advice on the basis of the conditions required by Marketgraph and information received from Customer as mentioned in article 1.6. If it appears that not all relevant information has been received and/or other problems and/or insights may arise, such as but not limited to incompatibility problems (software products are unable to interoperate with each other), the given advice may be adjusted to the new circumstances.

## **2.9 Activities**

- 2.9.1** All activities will take place without interruption on Workdays and under normal working conditions.
- 2.9.2** For every continuous period within which Marketgraph performs activities for less than 3 (three) hours at a location other than at Marketgraph's place of business, Marketgraph will be entitled to charge Customer for a minimum of 3 (three) hours. A continuous period exists if the period in which no activities are performed does not exceed more than 1 (one) hour.
- 2.9.3** Activities that are performed outside of Workdays are considered as overtime. The applicable rate will be increased with 50% for overtime after or before Workdays. The applicable rate will be increased with 100% for overtime on weekends and public holidays.
- 2.9.4** If it is agreed upon that activities will take place in phases, Marketgraph will be entitled to postpone activities that belong to the next phase until Customer has accepted in writing activities performed in the previous phase.
- 2.9.5** Only if agreed upon explicitly in writing will Marketgraph be obligated when performing activities to follow timely and reasonable instructions given. Marketgraph is not obligated to follow instructions that will alter the content or scope of the agreed upon activities. In the event such instructions are followed, the activities performed will be charged on the basis of Subsequent Calculation.
- 2.9.6** Marketgraph is entitled, without the explicit consent of Customer, to make use of third parties when performing activities.

## **2.10 Backups**

- 2.10.1** If it is not possible for Customer to make backups (and it is possible for Marketgraph to make backups) or if it is agreed upon that Marketgraph will provide partially or entirely for the provision of backups, Marketgraph will make the backups. In no event, will Marketgraph be liable for these backups for so far as but not limited to the complete or partial loss of these backups and/or errors in the backups.

## **3. THIRD PARTY PRODUCTS**

### **3.1 Third Party Products**

- 3.1.1** Marketgraph has the right to deliver Third Party Products or make use of Third Party Products in fulfilling its obligations that may flow forth from the agreement. Marketgraph is not responsible for Third Party Products, unless agreed upon otherwise in writing.
- 3.1.2** If Marketgraph delivers Third Party Products to Customer the Third Party General Conditions will be applicable to the agreement in addition to these General Conditions Marketgraph.
- 3.1.3** Marketgraph will deliver rights regarding Third Party Products under the same conditions as given in the Third Party General Conditions.
- 3.1.4** Repair on Third Party Products:
- a) Under no circumstances will Third Party Products be

replaced unless Customer makes an explicit request and pays all connected costs as an Advance.

- b) Operational costs will be applicable on all repairs. In the event that repairs take place outside of Marketgraph's office, a compensation for travel and waiting time and other connected costs will be charged.

## **3.2 Third Party General Conditions**

- 3.2.1** Third Party General Conditions that are declared applicable in these General Conditions Marketgraph shall, when available to Marketgraph, only be provided on request. Third Party General Conditions will be delivered in the same format and language as received by Marketgraph.
- 3.2.2** The General Conditions Marketgraph has priority over Third Party General Conditions unless indicated otherwise. When there is conflict between the General Conditions Marketgraph and Third Party General Conditions, Marketgraph has the right to declare the conflicting terms of the Third Party General Conditions non-applicable or applicable.

## **4. DELIVERY**

### **4.1 Delivery Dates**

- 4.1.1** All delivery dates which may be named by and may be applicable to Marketgraph are determined to the best of Marketgraph's knowledge on the basis of information made known to Marketgraph and will be taken into consideration as much as possible.
- 4.1.2** Delivery dates shall therefore not be considered to be absolute delivery dates within which must be delivered, but a time period within which Marketgraph shall strive with best efforts to deliver the agreed upon items. If it is not possible to keep to the delivery date, then Marketgraph and Customer will consult with each other to agree on a substitute delivery date.
- 4.1.3** Exceeding a given delivery date which may be applicable never constitutes an attributable shortcoming by Marketgraph. Marketgraph does not accept liability under any circumstances in cases where the delivery date may be exceeded, unless otherwise agreed upon in writing.

### **4.2 Reservations**

- 4.2.1** Marketgraph shall commence execution of the agreement between Marketgraph and Customer only after a signed copy of the agreement drawn up by Marketgraph has been received by Marketgraph and/or having received payment of all amounts due fully and on time. Should Marketgraph commence execution of the agreement prior to receiving a signed copy of the agreement and/or having received payment of all amounts due fully and on time, Marketgraph reserves the right to suspend execution of the agreement pending receipt of a signed copy of the agreement and/or payment of all amounts due fully and on time.
- 4.2.2** All of Customer's rights are provided under the suspended condition that Customer pays the agreed compensations fully and on time. In case of failure to pay, Customer must return the Services to Marketgraph at Customer's expense within one week of receiving the instruction from Marketgraph to do so. All other remedies in law remain applicable.

### **4.3 Risk**

- 4.3.1** From the moment of delivery Customer will bear the risk of the Services delivered even if possible ownership and user rights have not yet been transferred. As a result Customer will be held accountable for full payment of the Services

- delivered regardless of the situation that the Services delivered have perished or that their value has declined due to circumstances for which Marketgraph cannot be held accountable.
- 4.3.2** The aforementioned will also be applicable from the moment in which Customer does not make it possible for Marketgraph to make a delivery.
- 4.4 Installation and Implementation**
- 4.4.1** Prior to installation and/or implementation Customer will see to it, at its own expense, that all conditions required by Marketgraph have been met in order to ensure a successful installation and/or implementation.
- 4.4.2** Customer will ensure and is entirely responsible for obtaining the necessary Third Party General Conditions in order to let installation and/or implementation take place legally.
- 4.4.3** If, due to the Customer's fault, implementation and/or installation has not been performed within the agreed upon time schedule, Customer will make payments as if implementation and/or installation have been performed, undiminished the obligations of Marketgraph to proceed with installation and/or implementation at a later time period.
- 4.5 Acceptance Procedure**
- 4.5.1** Marketgraph shall deliver the Services to Customer in accordance with the specifications established in writing by Marketgraph and install them.
- 4.5.2** An acceptance period will only be applicable if parties explicitly agree to such. The acceptance period for Customer runs for 14 (fourteen) days immediately following completion of the installation. During the acceptance period, Customer is not permitted to use the Services for production and/or operational purposes.
- 4.5.3** The Services shall be considered by both parties as accepted:
- on the first day following the acceptance period, or
  - when Marketgraph, before the end of the acceptance period, receives a Test Report (article 4.6): at the moment that the Errors identified in that Test Report have been repaired, notwithstanding the presence of small Errors which according to article 4.7.4 do not hinder acceptance.
- 4.5.4** If the Services are delivered and tested in phases and/or parts, the non-acceptance of a particular phase and/or part will not delay the acceptance of an earlier phase and/or another part.
- 4.5.5** In deviation to the previous, the Services shall be considered as accepted when Customer uses the Services in any manner before the moment of acceptance for productive or operational purposes, from the beginning of such use.
- 4.6 Test Report**
- 4.6.1** If it becomes apparent during the acceptance period that the Service contains Errors, which hinder the progress of the acceptance test, Customer shall inform Marketgraph no later than the last day of the acceptance period in writing in a as detailed as possible Test Report of the Errors, in which case the still remaining acceptance period will be interrupted until such time as the Service is so modified that the Errors are removed.
- 4.7 Errors**
- 4.7.1** The Customer is required to immediately report possible Errors to Marketgraph.
- 4.7.2** Every right to repair of Errors lapses if the Services provided by Marketgraph are altered in any way or form.
- 4.7.3** The repair of Errors shall take place at the location to be determined by Marketgraph. Marketgraph is entitled to install temporary solutions, emergency solutions, detours and/or other restrictive measures in the Services.
- 4.7.4** Acceptance of the Services may not be withheld on grounds other than those which are related to specifications which have been expressly agreed upon between the parties nor, furthermore, due to the presence of small Errors which do not reasonably impede putting the Services into productive or operational use.
- 4.8 Replacement Performance**
- 4.8.1** Marketgraph is permitted to deliver alternative Services than those Services ordered by Customer if the performance and operation of such alternative Services is essentially no different from the Services ordered.
- 4.8.2** If the agreement is entered into with the objective of having activities carried out by a particular individual, Marketgraph will be entitled to replace this person with another person with the same qualifications.
- 5. PRICES/PAYMENTS**
- 5.1 Prices and Payments**
- 5.1.1** All prices exclude VAT and other levies imposed by the government. The amounts invoiced to Customer will include applicable VAT and other levies possibly imposed by the government.
- 5.1.2** Unless otherwise agreed upon in writing, Marketgraph will invoice the amount, appropriately itemized, owed by Customer on a monthly basis to Customer. Customer will pay all amounts indebted within 30 (thirty) days of the invoice date. These payments will not be subject to compensation or deduction other than when permitted by law.
- 5.1.3** Should Customer fail to fulfill any payment obligation, Customer is in breach without any further notification of breach being required. Marketgraph reserves the right to charge all incurred costs to Customer, including judicial and extra-judicial expenses, with regard to the collection of debts from Customer. Extra-judicial collection costs amount to 15% of the debt, with a minimum of Euro 500,- (five hundred). In any case Customer will be charged interest on a monthly basis, at the legal percentage rate, on all outstanding debts starting from the date of failure to pay.
- 5.1.4** Until full payment has been made, Marketgraph has the right to suspend all services and obligations to Customer. The Customer's obligation to meet Customer's commitments remains unchanged.
- 5.1.5** If Marketgraph is unable to make a delivery in time due to Customer, Marketgraph will have the right to charge a 2,25% interest reimbursement on a monthly basis over the indebted amount.
- 5.1.6** Compensation for Maintenance, Support and any other annual or periodic amounts are due as an Advance at the moment of realization of the agreement between the parties and shall be billed to Customer, appropriately itemized prior to each year or other period that the agreement between parties continues.
- 5.1.7** The indebted amount in this article may be increased with order costs, postage costs and costs of third parties. An increase can also take place in the event that activities have to take place outside of Marketgraph's office. In the event that activities need to take place outside of Marketgraph's office, hourly rates, travel and waiting- time compensations, actual travel and/or kilometer compensation, hotel expenses and any other costs

- connected to such services will be charged. The travel and waiting- time compensation amounts to 50% of the current hourly rate of € 105,00. The means of transportation will be determined by Marketgraph. The foregoing is also applicable on services provided outside of The Netherlands.
- 5.1.8** Above mentioned paragraphs leave all the legal rights of Marketgraph unhindered, when Customer fails to meet Customer's commitments.
- 5.2 Price Changes**
- 5.2.1** The prices agreed to between Marketgraph and Customer are among other things based on the costs of salaries, social premiums, materials, and travel and accommodation costs, etc., as well as the rate of exchange between the currencies as applicable at the time of closing of the agreement. Marketgraph is authorized, in case of changes to one or more of the cost items and/or changes in the rate of exchange, to adjust the prices to these changes.
- 5.2.2** Marketgraph will offer Customer the possibility to become acquainted with possible changes in prices. If Customer does not agree with a price change, Customer will only be permitted to terminate the agreement from the date the change in price becomes applicable, if the total price increase during 1 (one) year exceeds the yearly inflation rate of the current year (or previous year for price increases announced for the next year) as published by the CBS (Dutch Bureau for Statistics) by 10%.
- 5.3 Fixed Price**
- 5.3.1** In the case of a Fixed Price agreement, activities will be performed on the basis of a prior agreed upon price. Additional hours will not be charged unless Marketgraph can appeal to article 1.6.4.
- 5.4 Subsequent Calculation**
- 5.4.1** When charges are to be based on Subsequent Calculation, a global estimate of the expected costs shall be made prior to Marketgraph commencing the agreed upon activities. On conclusion of the activities, all costs actually incurred related to the activities will be calculated and charged. The Customer is, then, aware that there is a possibility that the estimate made earlier could be lower than the costs actually incurred. If no agreements have been made regarding billing, activities will be performed on the basis of Subsequent Calculation.
- 5.5 Advance**
- 5.5.1** Marketgraph has the right to charge payments in Advance. If full payment of the Advance is not made, Marketgraph has the right, undiminished its other rights that may flow forth from the agreement, to suspend all its obligations and all amounts owned by Customer will be immediately due.
- 5.6 Payment schedule**
- 5.6.1** Unless agreed upon otherwise, the following payment schedule will apply to Customer:
- First term, 50% of the amount due will be paid as an Advance;
  - Second term, 50% of the amount due will be paid in equal parts on a monthly basis between the moment of entering into the agreement and the expected delivery date of the Services;
- 6. INTELLECTUAL PROPERTY RIGHTS**
- 6.1 Rights of Customer and Marketgraph**
- 6.1.1** Marketgraph has the exclusive right to further develop the Marketgraph Services and place them at the disposal of third parties by means of licenses.
- 6.1.2** Except where Third Party Products are concerned, all intellectual property rights, industrial property rights and other rights resulting from all activities carried out by Marketgraph, regardless of where and when carried out and regardless of whether it concerns the delivery of an existing product or a still-to-be-developed product, reside with Marketgraph.
- 6.1.3** Customer acknowledges that all present and future intellectual property rights, industrial property rights, other rights and the registration and/or application of the foregoing rights and/or similar rights for the whole term thereof and all renewals or extensions thereof, now or at any time in the future worldwide at all times shall be and are hereby assigned or will be transferred to Marketgraph.
- 6.1.4** Customer is not permitted to remove or alter any designation concerning intellectual property rights, industrial property rights, other rights, trademarks and trade names from the Services or to have such changes made by third parties.
- 6.1.5** The intellectual property rights, industrial property rights or other rights of a Service, or a part thereof, can only be transferred to Customer by means of a written deed, if Marketgraph has these rights.
- 6.1.6** In the event that Marketgraph, Customer or a third party makes functional improvements or other adjustments in the Services, the intellectual property rights, industrial property rights and other rights vested in the improved or adjusted Service will remain unchanged with Marketgraph or the rightful third party. If the above mentioned rights do not belong to Marketgraph or the rightful third party, Customer will cooperate in transferring the above mentioned rights to Marketgraph or the rightful third party.
- 6.2 Indemnification**
- 6.2.1** Marketgraph shall protect Customer from any allegation to the effect that the Marketgraph Services violate a copyright valid in the European Union. Marketgraph shall pay the damages, expenses, and court costs that Customer is ordered to pay by the final court ruling, provided that Customer:
- notifies Marketgraph immediately, but no later than within 10 (ten) days, after Customer becomes aware of the infringement or could have become aware of the infringement, in writing of the existence of the allegation of infringement; and
  - gives the case completely over to Marketgraph, including all negotiations and arrangements that might lead to a settlement.
- In case of any such allegation or possible allegation, Marketgraph reserves the right to obtain a license or sub-license on the Marketgraph Service in question or to change or replace the Marketgraph Service in such a way that the Marketgraph Service will no longer infringe a copyright valid in the European Union.
- 6.2.2** Marketgraph shall not indemnify Customer against an action in the event that:
- such is based on the fact that the Third Party Product provided to Customer violates an intellectual property right, industrial property right or other right valid in the Netherlands or elsewhere;
  - what is provided by Customer is part of or is delivered in conjunction with a product and this combination results in a violation of an intellectual property right, industrial property right or other right valid in the Netherlands or elsewhere;
  - Customer has made a change in or to the Services.
- 6.2.3** If Marketgraph and Customer agree that the intellectual property rights, industrial property rights or any other rights

of a Marketgraph Service, or a part thereof, shall be transferred to Customer, Customer will indemnify Marketgraph against any action insofar as such is based on the fact that the Service, or a part thereof, violates an intellectual property right, industrial property right or any other right belonging to a third party.