

## General Conditions of Fysicon, established at Hooghevelstraat 114 in Oss, the Netherlands

### 1. Applicable Conditions

- a. Fysicon is understood to mean Fysicon Groep B.V. and Fysicon B.V.;
- b. These Conditions apply to any offer, sales, and delivery by Fysicon of goods and services to the Client. Deviations should be expressly agreed upon in writing;
- c. In these Conditions, Client is understood to mean: any (legal) person that has concluded or wishes to conclude respectively an Agreement with Fysicon, and besides this person his representative(s), authorised representative(s), assignee(s), and heirs;
- d. The applicability of possible purchase or other delivery conditions of Client is expressly rejected.

### 2. Tender; materialisation of Agreement

- a. Unless the tender expressly states duration of validity, a tender of Fysicon is fully free of obligations and an Agreement binding for Fysicon only materialises after a written confirmation from its side of an order or order confirmation from Client;
- b. Fysicon cannot be held to its tenders or offers if Client in all reason can understand that the tenders or offers and/or a part thereof contain an apparent mistake or writing error;
- c. A component price quotation does not oblige Fysicon to carry out a part of the assignment at a corresponding part of the price quoted. Offers or tenders do not automatically apply to future assignments;
- d. The Agreement between Fysicon and Client is entered into indefinitely, unless the nature of the Agreement shows otherwise, or if parties have expressly agreed otherwise in writing;
- e. Client sees to it that all data of which Fysicon indicates that it is necessary, or of which Client in all reason should understand that it is necessary for the implementation of the Agreement, is provided timely to Fysicon. If Fysicon has not been provided timely with the data necessary for the implementation of the Agreement, Fysicon is entitled to postpone the implementation of the Agreement and/or to charge the extra costs resulting from the postponement to Client, in accordance with the then usual rates. The implementation term does commence no sooner than that Client has provided Fysicon with the data.

### 3. Prices

- a. All prices stated by Fysicon are excluding VAT and other governmental levies, possible expenses to be made within the framework of the Agreement, including travelling, accommodation, shipment and administration expenses, unless indicated otherwise. These will be charged separately. The price for the goods to be supplied applies exclusively for the services to be carried out and is carriage-paid on location of delivery;
- b. Fysicon is authorised, with due regard of the respectively applicable legal price regulations, to modify the agreed remunerations per calendar year. The Client is entitled, in case of an increase of the remunerations, to annul this Agreement in writing within two months after publication of the increase, starting from the date on which the increase becomes effective. Possible modifications of the legal taxes applicable to the remunerations and possible other governmental levies and the Dutch Healthcare Authority NZa indexing can at all times be on-charged without this resulting in the right of annulment.

### 4. Delivery and delivery time

- a. The delivery term commences on the day of the materialisation of the Agreement or, in as far as the following takes place at a later time, on the day on which an agreed down payment has been made in full and the information to be provided by Client relevant for the implementation of the Agreement has been received;
- b. If for the implementation of certain activities or for the delivery of certain goods a term has been agreed upon or indicated, this shall never be a fatal term. If a term is exceeded, Client should therefore put Fysicon in default in writing. Fysicon should thereby be offered a reasonable term to still implement the Agreement;
- c. Fysicon is authorised to make partial deliveries;
- d. The delivery term and the further term do in case of incorrect delivery no count as having been exceeded, if Client has not filed well-founded complaints with regard to the goods delivered or services provided within five calendar days after the delivery of the goods or the implementation of the services;
- e. Delivery takes place ex company of Fysicon. Client is obliged to purchase the items at the moment that those are made available to him. If Client refuses or is in default with the provision of information or instructions which are necessary for the delivery, Fysicon is authorised to store the items at the expense and risk of Client. The risk of loss, damage, or value depreciation passes on to the Client at the moment on which items are made available to the Client;
- f. Fysicon is obliged to take the delivery time or delivery term indicated into account as much as possible, but shall never be liable for any exceeding thereof, and in case of exceeding thereof Fysicon is not obliged to any damage remuneration. Exceeding a delivery time or delivery term does not entitle Client to cancel or annul the Agreement and/or to refuse the purchase of goods. In case of excessive exceeding of a delivery time or delivery term, parties shall enter into mutual consultations.

### 5. Postponement, annulment, and premature cancellation of the Agreement

- a. Fysicon is authorised to postpone the compliance with the obligations or to annul the Agreement: (i) if Client does not, does not fully, or does not timely comply with the obligations from the Agreement; (ii) if after the conclusion of the Agreement circumstances have become known to Fysicon that give serious reasons to doubt whether Client shall comply with the obligations; (iii) if because of the delay from the side of the Client it can no longer be demanded from Fysicon that it shall comply with the Agreement against the originally agreed Conditions;
- b. If the Agreement is annulled, the claims of Fysicon on Client immediately fall due. If Fysicon postpones the compliance with its obligations, it retains its claims resulting from the Law and the Agreement;
- c. If Fysicon proceeds with postponement or annulment, it is in no way whatsoever obliged to remunerate damage and costs that result from that in any way whatsoever. If the annulment is attributable to Client, Fysicon is authorised to remuneration of damage, including the costs that thereby occurred directly and indirectly;
- d. If the Agreement is cancelled prematurely by Fysicon, Fysicon shall in consultations with Client see to the transfer of activities yet to be carried out to third parties. This does not apply if the annulment is attributable to Client. If the transfer of the activities by Fysicon results in extra costs, these shall be on-charged to Client. Client is obliged to pay those costs within the thereto stated term, unless Fysicon indicates otherwise;
- e. In case of liquidation, (application for) postponement of payment, or bankruptcy, seizure - if and in as far as the seizure has not been lifted within three months - at the expense of Client, debt-adjusting or another circumstance because of which Client no longer has free disposal of his capital, Fysicon is free to annul the Agreement with immediate effect and/or to cancel the order or Agreement, without any obligation on its side to pay any damages. The claims of Fysicon on Client in that case immediately fall due;
- f. If Client annuls a placed order partially or in full then the activities that were carried out as well as the goods ordered or made available for that, increased with the possibly transportation, recollection and delivery costs thereof as well as the working hours reserved for the implementation of the Agreement, shall be integrally charged to Client, without prejudice to the right to full damages, including lost profit to be claimed.

### 6. Payments

- a. Payments should be made at the latest within thirty calendar days or otherwise agreed after invoice date;
- b. The costs in relation to the payment are at the expense of Client;
- c. Complaints in relation to an invoice should be filed in writing with Fysicon within seven (7) days after the date of the invoice. Subsequently the Client is considered to have approved the invoice;
- d. If Client remains in default with regard to the timely payment of an invoice, Client is legally in default. In that case Client is due interest of 1% per month, unless the legal interest is higher, in which case the legal interest is due. The interest on the claimable amount shall be calculated from the moment that the Client is in default until the moment of payment of the complete amount due. Lapsed non-paid interest bears interest as well after one year;
- e. If Client is in default with the compliance of his obligations then all reasonable costs in order to obtain compliance extra-judicially are at the expense of Client. The extrajudicial costs amount to at least 15% of the amount due by Client including the aforementioned interest with a minimum of € 250;

f. Fysicon is entitled to deduct the payments made by Client in the first place from the costs, subsequently from the interest due, and finally from the main sum and the current interest;

g. Client is never authorised to settle the amount due by him to Fysicon. Complaints about the height of an invoice do not postpone the payment obligation.

#### **7. Transfer of risk and property/ownership**

a. The risk for goods to be delivered is always and permanently transferred to Client at the moment of arrival at the agreed location of delivery;

b. Software shall never become the property of Client. Fysicon grants Client a licence for the use of the software. This user right is not exclusive and not transferrable to third parties;

c. All items delivered by Fysicon, also including possible drafts, sketches, drawings, (electronic) files, etc. remain the property of Fysicon until Client has complied with all obligations resulting from the Agreements with Fysicon;

d. Client is not authorised to pledge items that resort under the retention of ownership;

e. Client shall always do what can be reasonably expected from him in order to safeguard the ownership rights of Fysicon. If third parties seize the delivered items under retention of ownership and/or wish to establish rights thereupon, or in fact do so, then Client is obliged to immediately notify Fysicon on that. Furthermore Client obliges himself to insure and keep insured the items delivered under retention of ownership against fire, explosion, and water damage as well as against theft, and to provide the policy of this insurance for perusal at the first request to Fysicon. In case of a possible payment of the insurance, Fysicon is entitled to this money;

f. In case Fysicon wants to exert its ownership rights as indicated in this Article, Client in advance provides unconditional and irrevocable permission to Fysicon and the third parties to be appointed by Fysicon in order to access all those locations where the property of Fysicon is located and to take this back.

#### **8. Force Majeure**

a. Fysicon is not obliged to comply with any obligation towards Client if it is thereby hindered as a result of a circumstance that cannot be attributed to guilt, and which is neither by virtue of the Law, a legal action, nor in opinions applicable in the branch at his expense.

b. In these General Conditions Force Majeure is understood to mean, apart from what it is understood to mean by Law and jurisprudence, all external causes, foreseen or unforeseen, on which Fysicon cannot exert its influence, but because of which Fysicon is not capable to comply with its obligations. Labour strikes at the company of Fysicon or third parties are thereby included. Fysicon is also entitled to appeal to Force Majeure if the circumstance that precludes the (further) compliance of the Agreement occurs after Fysicon should have had complied with its obligation.

#### **9. Complaints**

a. Client is obliged to check (have checked) the delivered goods immediately at the moment that the goods are made available to him or the respective activities have been carried out, respectively. Thereby Client should check whether quality and/or quantity of the delivered goods complies with what was agreed upon and complies with the requirements that parties have agreed upon in this regard. Possible visual shortcomings should be reported within seven days after delivery to Fysicon in writing. Possible invisible shortcomings should be reported immediately, but in any case at the latest within fourteen days of the discovery thereof to Fysicon in writing. The report should contain a description of the shortcoming which is as detailed as possible, so that Fysicon is capable to react adequately. Client should provide Fysicon with the opportunity to investigate (have investigated) a complaint;

b. If a shortcoming is reported later then Client is no longer entitled to repair, replacement or damages;

c. If it is ascertained that an item is faulty and a respective complaint was filed on time then Fysicon shall replace or see to repair of the faulty item within a reasonable term after return shipment thereof or, if return shipment is in all reason not possible, a written notification in this regard of the complaint by Client, such to the choice of Fysicon, and/or pay replacement remuneration thereto to Client. In case of replacement, Client is obliged to return the replaced item to Fysicon and to provide Fysicon with the ownership thereof, unless Fysicon indicates otherwise. Client is not entitled to remuneration of any which nature as a result of the established shortcoming;

d. If it is established that a complaint is unjustified then the costs in relation thereto, including the investigation costs made from the side of Fysicon, are integrally at the expense of Client;

e. In deviation of the legal periods of limitation, the period of limitation of all claims and defences towards Fysicon and the third parties involved by Fysicon during the implementation of an Agreement, amounts to one year.

#### **10. Liability**

a. If Fysicon should be liable, this liability is limited to what is arranged for in this provision;

b. Fysicon is not liable for damage of any which nature that occurred because Fysicon assumed incorrect and/or incomplete data provided by or on behalf of Client;

c. Possible liability of Fysicon is at all times limited to the damage caused directly, and is at all times limited to the maximum invoice amount. In no case whatsoever shall the liability of Fysicon be higher than the amount that the professional liability insurer of Fysicon will pay in the respective case;

d. Except when and in as far as should result otherwise from a provision of peremptory law with regard to (product) liability, Fysicon is not obliged to any remuneration of damage, from whichever nature, to any movable or immovable good and/or to any person, business damage also included, at the Client or any third party, which damage is caused directly or indirectly or is related to any item or good delivered by or on behalf of Fysicon, and/or is caused directly or indirectly or is related to any use or any application of processing such item or good or storage or keeping thereof, and/or the mounting, installation or taking into use of such item or good, and Client expressly indemnifies Fysicon against claims that are based on any such damage or are related thereto;

e. With due regard to what is established elsewhere in this Article, Fysicon is by no means liable for damage or loss directly or indirectly caused by: (i) Injudicious use of the goods delivered or the use thereof for another purpose than for which it is in all reason considered to be suited; (ii) Careless behaviour from Client, from the staff of Client, or any other persons deployed by him, or any other person from the side of the Client;

g. Fysicon is never liable for indirect damage, including consequential damage, loss of production, extra costs of purchases elsewhere, reconstruction of lost information, fines, discounts, lost profit, missed savings, or damage because of stagnation of business;

h. The right to damages lapses if it has not been claimed in writing within fourteen days after the discovery of the damage. Damages is not entitled to remuneration if it occurs later than twelve months after delivery of the respective good or the notification that a service was carried out;

i. The limitations of liability as included in this Article do not apply if the damage can be attributed to intent or gross negligence by Fysicon or its managing subordinates;

j. Third parties that are involved in the implementation of the Agreement and that also belong to the group of which Fysicon constitutes a part can at least file the same means of defence against a possible claim from Client as Fysicon can file based on these General Conditions;

k. From Fysicon and said third parties together no higher damages can be obtained than can at most be obtained from Fysicon alone.

#### **11. Indemnification**

a. Client indemnifies Fysicon against possible claims from third parties that suffer damage in relation to the implementation of the Agreement and of which the cause is attributable to others than Fysicon. If Fysicon should be addressed by virtue of this by third parties, Client is obliged to both extra-judicially and judicially assist Fysicon and immediately do everything that may be expected from him in that case. Should Client remain in default in taking adequate measures then Fysicon is entitled to proceed thereto itself without proof of default. All costs and damage that has thereby occurred at the side of Fysicon and third parties are integrally at the expense and risk of Client.

#### **12. Intellectual ownership rights**

a. Unless it expressly appears otherwise from the Agreement, all rights of intellectual property resulting from the implementation of the Agreement belong to Fysicon;

b. Client shall only use (co-) supplied software in the broadest meaning of the word, auxiliary equipment, technical data, connection and/or operating schedules, user and/or operating instructions, drawings, and all other essential documentation and other data and information provided by or on behalf of Fysicon for his own (internal use), and not on-supply, pledge, sell or make available in any which way to any third party, nor have it made used by any third party. If no Agreement materialises, Client shall at the first request of Fysicon immediately return the data carriers and possible copies thereof, including the tender;

c. Fysicon reserves the rights and authorisations that it is entitled to based on the Dutch Copyright Act (Auteurswet) and other intellectual legislation and regulations;

d. Fysicon can in no way be held liable with regard to infringement on any right of industrial or intellectual ownership and/or any exclusive right which is the result of any modification to a good sold or delivered by or on behalf of Fysicon or of any use of such a good or any application of such a good that is different from what Fysicon has prescribed and which Fysicon assumed, or which is the result of integration with or in use of application in combination with goods not sold and delivered by or on behalf of Fysicon, or which is the result of a software modification which was not carried out by Fysicon.

**13. Warranty**

Fysicon only guarantees the construction and the proper functioning of parts of the goods delivered by it. This warranty applies for a period of twelve (12) months upon delivery, unless agreed otherwise in writing. The warranty only applies if the defect cannot be attributed to Client. The warranty is limited to repair by or on behalf of Fysicon, or replacement of the respective part or good, such to the choice of Fysicon. Client should send the goods eligible for repair or replacement to the address to be indicated by Fysicon at his own expense and risk.

**14. Various**

- a. Apart from these General Conditions, specific Conditions can apply to assignments of a specific nature, such as with regard to mounting, software, service, etc. If Fysicon delivers goods or supplies services that resort under the US Export Administration Act, Client is obliged to observe the provisions intended for him;
- b. Fysicon and Client are obliged to confidentiality with regard to all confidential information that they have obtained from the other party within the framework of the Agreement. Information is deemed to be confidential if this is notified by the other party or if this results from the nature of the information;
- b. On all goods which are under Fysicon from or on behalf of Client, regardless of the cause of reason thereof, Fysicon holds the right of retention as long as Client has not complied with all his obligations towards Fysicon;
- c. Fysicon is authorised to unilaterally modify these General Conditions. Client shall receive a new version of these General Conditions as soon as they have been modified;
- d. Should any provision from an Agreement lack legal force then the other provisions remain valid unimpaired, unless observing the Agreement is then obviously unreasonable.

**15. Disputes**

- a. Dutch Law exclusively governs all legal relations whereby Fysicon constitutes a party. The applicability of the Vienna Sales Treaty is expressly excluded;
- b. Only the 's-Hertogenbosch judge is authorised to be informed on disputes. Nevertheless Fysicon is entitled to present the dispute to a legally competent judge;
- c. Parties shall only call for legal intervention after they have done their utmost to solve a dispute in mutual consultation.

**16. Location and modification of Conditions**

- a. These Conditions are deposited with the Chamber of Commerce.
- b. The Dutch text of the General Conditions shall always be leading at the interpretation thereof.

Fysicon  
January 2019