

General Terms and Conditions of Smart Production Solutions 2018

1. Definitions

- 1.1. Supplementary Conditions for Use: the terms and conditions of third parties for the use of their Software.
- 1.2. General Terms and Conditions: these general terms and conditions and any appendices to them.
- 1.3. Authentication Tools: the data or means, or the combination of data and means, by which the Client can authenticate itself with Smart Production Solutions, such as the combination of user name and password.
- 1.4. Services: the services of Smart Production Solutions as specified in the Agreement, such as Maintenance, Support and Implementation.
- 1.5. Documentation: the user manuals and instructions provided by Smart Production Solutions for the Software and Services.
- 1.6. Smart Production Solutions: Smart Production Solutions B.V. and/or any group company of SPS or any entity in which Smart Production Solutions B.V. holds a controlling interest.
- 1.7. Defect: the failure of the Software or a Service to comply with the Documentation.
- 1.8. Implementation: the work involved in setting up and configuring the Software and the other work required to deliver the Software ready for use.
- 1.9. Maintenance: the remedying of Defects in the Software and provision of any new versions of the Software.
- 1.10. Support: the provision by Smart Production Solutions and Client Service of a help desk for user questions, fault reports and – depending on the service contract type – the resolution of faults and/or Defects and the performance of Maintenance, all as described in these General Terms and Conditions, the Agreement and the SLA.
- 1.11. Client: Smart Production Solutions' co-contracting party.
- 1.12. Agreement: the agreement between Smart Production Solutions and the Client, including but not limited to the quotation that the Client accepts for the provision of Services by Smart Production Solutions to the Client.
- 1.13. Written/In Writing: by letter or e-mail.
- 1.14. Service Level Agreement (SLA): the separate agreement in which the maintenance and support services, including the availability of the Software, are set out in further detail.
- 1.15. Software: the software of Smart Production Solutions and/or third parties as specified in the Agreement.

2. General

- 2.1. These General Terms and Conditions apply to all offers made by and Agreements with Smart Production Solutions. The applicability of any of the Client's other general terms and conditions is expressly excluded. Insofar as performing the Agreement also involves supplying or reselling of third-party products and/or services, the relevant general or other terms and conditions of those third parties apply. For example, using third-party Software is subject to any applicable Supplementary Conditions for Use.
- 2.2. An Agreement is concluded when the Client signs it. Agreements that are made electronically (e.g. by e-mail) are concluded only after Smart Production Solutions has confirmed the Client's assignment or order In Writing. Verbal agreements are valid only if and after Smart Production Solutions has explicitly confirmed them In Writing.
- 2.3. If there is any inconsistency, the following order of priority

applies (more specific before general): (1) an Agreement, (2) the General Terms and Conditions, (3) the Supplementary Conditions for Use, (4) the SLA.

3. Key principle of service provision: partnership

- 3.1. Smart Production Solutions wishes to work with its clients based on a partnership concept that considers each other's reasonable interests. This reciprocity means that Smart Production Solutions and the Client will always assist each other in trying to achieve the maximum result from their cooperation.
- 3.2. However, the Client realises that Smart Production Solutions depends on the proper functioning of third-party products and/or services and/or the cooperation of the Client for performing the Agreement.
 - A. Smart Production Solutions may be expected to assume responsibility for what SPS can exercise decisive control over in this regard. For example, Smart Production Solutions warrants the quality of the Software and the Services SPS provides and delivers and that they will conform to the arrangements in the Agreement and/or SLA, but SPS cannot take far-reaching responsibility for parts of the services over which SPS has no control, such as a functioning point-to-point connection.
 - B. Because of the partnership concept, Smart Production Solutions expects the Client to assume responsibility for the fulfilment of its own obligations. Among other things, this means that the Client is responsible for: (a) its own technical network infrastructure and its security, which infrastructure will continue to meet the requirements set and/or adjusted by Smart Production Solutions; (b) promptly cooperating as needed for the performance of the Services and obligations by Smart Production Solutions.
- 3.3. The delivery and other periods that Smart Production Solutions specifies are based on the data and circumstances known to SPS when SPS signs the Agreement. Unless expressly agreed otherwise in the Agreement, delivery and other periods are not strict deadlines. Exceeding a delivery or other deadline therefore does not automatically mean that Smart Production Solutions is in default.
- 3.4. Smart Production Solutions can only be in default after the Client gives it a realistic last chance under a Written notice of default, in which a reasonable period is set for remedying the relevant breach and Smart Production Solutions still attributably fails to perform within that period. The notice of default must include a full and detailed description of the breach, so Smart Production Solutions can respond adequately.

4. Providing Software

- 4.1. Smart Production Solutions will provide the Software specified in the Agreement to the Client under the conditions of use described in the Agreement, these General Terms and Conditions and, in relation to any third-party Software, the applicable Supplementary Conditions for Use.
- 4.2. Smart Production Solutions will host this Software and the Client's data in the data centres of Smart Production Solutions' specialist hosting partner(s). The Software and data are hosted within the EEA. The Client acknowledges that the undisturbed functioning of the Software depends on external, physical factors such as internal and external networks, geographical location and buildings. Because of these dependencies, Smart Production

Solutions cannot warrant that the Software will always function flawlessly, free of Defects and without faults. As part of its services, Smart Production Solutions offers the Client an SLA containing detailed arrangements on issues such as availability, service levels, and response and resolution times relating to the Software. Besides any other warranties in the SLA, Smart Production Solutions ensures that the Software achieves the availability rate (uptime) specified in the SLA. Smart Production Solutions also makes a daily backup of the Client's Software, data and log files on a remote server, with the availability of a disaster recovery location. These obligations are further detailed in the SLA.

- 4.3. Smart Production Solutions will provide the Client with the Authentication Tools that enable the Client to access the Software and its data.
- 4.4. The Client is responsible for the functional management of the Software.
- 4.5. Smart Production Solutions ensures appropriate security measures, as specified in Article 15, or the processing agreement and a secure connection based on an SSL certificate. However, the Client is responsible for the careful use and management of the Authentication Tools. If a user accesses the Software and data using the Authentication Tools, Smart Production Solutions may assume this is an authorised user.
- 4.6. The Client is always responsible for its use of the Software and Services and all other forms of processing the personal and other data in the Software and elsewhere performed by or on behalf of the Client. The Client must ensure that it or its employees do not process any unlawful data or otherwise infringe the rights of third parties when using the Software.
- 4.7. Smart Production Solutions is not liable for the inaccuracy, incompleteness or illegality of the content of information and/or personal or other data stored with the aid of the Software, or for correct and unimpeded data transmission aided by the Software, changes to, additions to and/or the use or other processing of personal or other data and/or available information. The Client indemnifies Smart Production Solutions against third-party claims based on the assertion that the data stored in the Software by the Client and/or its employees, or the changes in, additions to and/or use or other processing of personal or other data and available information by the Client and/or its employees is unlawful. The Client must compensate Smart Production Solutions for all reasonable costs and other damage it suffers because of such claims, immediately on a Written request accompanied by a clear specification.
- 4.8. If Smart Production Solutions is informed that any information the Client and/or its employees has and/or have stored and/or exchanged using the Software is unlawful, Smart Production Solutions reserves the right to immediately remove that information or block access to it. Smart Production Solutions will not be liable for any damage resulting from that action under any circumstances. The Client indemnifies Smart Production Solutions against all claims brought by its employees and/or third parties, including claims for compensation, against Smart Production Solutions.
- 4.9. Smart Production Solutions always reserves the right to temporarily decommission the Software if SPS considers this necessary for the safety and integrity of the Software, performing essential, preventive maintenance, remedying Defects, troubleshooting, adapting and improving Software of Smart Production Solutions or third parties, or if the Client acts contrary to the law. Smart Production Solutions will obviously arrange for such

decommissioning to be outside office hours as far as possible and will inform the Client of the planned decommissioning as soon as possible. Because such decommissioning is in the Client's interest, Smart Production Solutions is never obliged to perform, compensate or pay damages to the Client. The Client must accept any adjustments and changes in this regard and follow Smart Production Solutions' instructions for their implementation, so the quality of the Software and Services is maintained or improved.

- 4.10. Smart Production Solutions endeavours to ensure that specific laws and regulations are supported as effectively as possible in the Software. It is the Client's responsibility to comply fully with the laws and regulations that apply to it.

5. Software development

- 5.1. If the Agreement covers the development and implementation of customised software, Smart Production Solutions will perform these activities with due care under the specifications agreed between the Parties and any information, documentation and designs provided by the Client. Unless the Parties agree otherwise, Smart Production Solutions will develop software in co-creation with the Client under a development method characterised by the iterative design of all or parts of the software (e.g. Scrum). The Parties accept that the software specifications have not been, or have not been fully, worked out in advance and can be adjusted during the performance of the work by agreement, including for a subsequent iteration. The software to be delivered must comply with the most recently agreed set of specifications.

6. Implementation

- 6.1. Smart Production Solutions will carry out the Implementation in cooperation with the Client under the arrangements made for that purpose in the Agreement or another document (action plan or implementation plan).
- 6.2. The Client will cooperate as needed with Smart Production Solutions, including promptly providing the information requested and required by Smart Production Solutions, and all other cooperation deemed necessary by Smart Production Solutions.
- 6.3. If the start or progress of the work is delayed by factors for which the Client is responsible, the Client will reimburse the costs that Smart Production Solutions incurs because of the delay at Smart Production Solutions' normal rates.

7. Acceptance

- 7.1. If the Parties have agreed on an acceptance arrangement, the Software and/or Services will be deemed accepted after successful completion of that acceptance arrangement.
- 7.2. If the Parties have not agreed on an acceptance arrangement, the Services provided will be deemed accepted as soon as the Services have been performed and after completion of the Implementation the Software provided will be deemed accepted once it has been put into use by the Client or – if not put into use promptly – 15 days after delivery by Smart Production Solutions.
- 7.3. If it is agreed that the Service will be performed in phases, Smart Production Solutions may suspend the performance of the parts belonging to a subsequent phase until the Client has approved the results of the preceding phase. In Writing and fulfilled the corresponding payment obligations. If Smart Production Solutions does not receive the intended and required Written approval within 30 calendar days, the performance of that part of the Service will be deemed approved.

8. Maintenance and Support

- 8.1. Smart Production Solutions provides Support to the Client and will perform Maintenance on the Software. This will be done under the Service Level Agreement. Regarding third-party Software, Smart Production Solutions will provide Support and Maintenance only as long and insofar as the relevant third party supports and maintains that Software.
- 8.2. Smart Production Solutions will not charge separately as part of the Maintenance for necessary changes to the Software and databases because of changes in laws and regulations, unless SPS holds the view these changes are major adjustments or have major consequences for setting up the Software and database. In such a situation, Smart Production Solutions cannot be expected to make these adjustments without additional costs.

9. Fees and payment

- 9.1. The fees payable by the Client to Smart Production Solutions for the Software and/or Service(s) are specified in the Agreement. Unless expressly agreed otherwise In Writing, the price will be subsequently determined at Smart Production Solutions' applicable hourly rates based on the actual hours or parts of hours worked.
- 9.2. If Smart Production Solutions performs its work at the Client's location, at least four (4) hours per day will be charged (regardless of the work).
- 9.3. If Smart Production Solutions performs additional work at the Client's request, this work will be eligible for payment as additional work. Smart Production Solutions will perform such work at its prevailing hourly rates based on actual costs.
- 9.4. All amounts and rates specified by Smart Production Solutions are in euros, exclude VAT and other government levies or charges, and include travel and accommodation costs.
- 9.5. Smart Production Solutions reserves the right to alter all its rates and fees annually in line with the CPI wage index with effect from 1 January of the second contract year. Smart Production Solutions may also always pass on demonstrable price increases of third parties and its other suppliers to the Client.
- 9.6. The Client will pay the amounts due within 30 days of the invoice date. If the Client fails to pay on time, it will be in default by operation of law. The Client must then pay statutory commercial interest (under Article 6:119a of the Dutch Civil Code) from the due date of the invoice to the date of payment in full, notwithstanding Smart Production Solutions' other rights. Any costs, both judicial and extrajudicial (including at least collection costs and enforcement costs), incurred by Smart Production Solutions to enforce compliance with the Client's payment obligations are payable by the Client. The extrajudicial costs are set at 15% of the invoice amount, subject to a minimum of €350.00.

10. Term, termination and its effects

- 10.1. The initial term of the Agreement is specified in the Agreement. If no term is specified, the Agreement will have a term of one (1) year. Unless agreed otherwise, the term of the Agreement will automatically be extended after the initial term ends by one (1) year each time.
- 10.2. Both Parties may give notice of termination of the Agreement at the end of the term, or extended term, of the Agreement, subject to a minimum notice period of three (3) calendar months. Early and interim notice of termination of the Agreement by the Client is not permitted.
- 10.3. Notwithstanding its legal rights, Smart Production Solutions is

authorised to suspend the performance of its obligations or to extrajudicially terminate all or part of the Agreement, without notice of default or being obliged to pay any refund or compensation, if: (a) the Client applies for or is granted a provisional moratorium on the payment of debts; (b) a petition for bankruptcy is filed or the Client is declared bankrupt; (c) the Client's business is liquidated or ends other than for restructuring or a merger of companies.

- 10.4. If the Client terminates the Agreement by notice and has received some performance under the Service from Smart Production Solutions, this performance and the related payment obligations will not be subject to cancellation, unless the Client demonstrates that Smart Production Solutions is in breach in relation to this performance. Any amounts that Smart Production Solutions invoices before the termination for what has been performed or delivered under a Service remain due in full, subject to the preceding sentence, and become payable immediately upon termination.
- 10.5. After learning of the termination of the Agreement, Smart Production Solutions will cooperate as needed to ensure the smooth transition to a new system by the Client, including providing all files and data of the Client to the Client or to a third party designated by the Client. As soon as possible after all the Client's files and data are returned to the Client, Smart Production Solutions must destroy these files and data under the applicable privacy legislation, unless the Client requests Smart Production Solutions In Writing, prior to the return, to keep the files and data for an additional reasonable period of time to be determined by the Client then. After the aforementioned additional period, Smart Production Solutions will destroy the files and data as soon as possible. The retention of the files and data for the additional retention period is the sole responsibility of the Client.
- 10.6. From the moment of termination of the Agreement, for whatever reason and on whatever grounds, the Client will – unless expressly agreed otherwise – immediately cease and desist from using all provided Software. If the files and data are stored in third-party systems, the above will apply under the conditions and restrictions of the applicable Supplementary Conditions for Use. The Client will reimburse the reasonable costs of the work resulting from this article for Smart Production Solutions at Smart Production Solutions' prevailing hourly rates.
- 10.7. If so desired by the Client after termination of the Agreement, it may request Smart Production Solutions to extend the Agreement by a maximum of six (6) months, unless agreed otherwise by the Parties. After having obtained the Client's consent, Smart Production Solutions will cooperate in this respect, on the understanding that the Client's use of the Software is then limited to reading rights. The Client's additional costs then amount to 50% of the last agreed rate in proportion to the additional period of use.

11. Liability

- 11.1. Smart Production Solutions' total liability for damage that the Client suffers because of Smart Production Solutions or a person for whom SPS is legally liable, for failing to comply with the Agreement or any other reason, is limited to compensation of direct damage capped at the amount paid out by Smart Production Solutions' insurance, or €50,000.00 (fifty thousand euros) per event and €250,000.00 (two hundred and fifty thousand euros) for all events collectively. 'Direct damage' exclusively means:
- A. reasonable costs that the Client would need to incur to

have Smart Production Solutions' performance conform to the Agreement; however, this replacement damage will not be compensated if the Agreement is terminated by or at the Client's request;

- B. reasonable costs incurred by the Client in having to keep its old system or systems and related facilities operational for a longer period because of Smart Production Solutions' failure to deliver on a final and binding delivery date, less any savings resulting from the delayed delivery; this does not apply if the delay arises from a cause attributable to the Client;
 - C. reasonable costs of determining the cause and extent of the loss, insofar as the determination relates to direct damage within the meaning of these terms and conditions;
 - D. reasonable costs incurred to prevent or limit damage, insofar as the Client demonstrates these costs have limited the direct damage within the meaning of these terms and conditions.
- 11.2. Smart Production Solutions' liability for any indirect damage is excluded. Indirect damage includes consequential damage, loss of profit, loss of savings, reduced goodwill, business interruption losses, damage because of claims from the Client's customers, corruption or loss of data and all forms of damage other than those mentioned in Article 11.1 for whatever reason.
- 11.3. The limitations of liability in this article do not apply if the Client's damage is caused by an intentional act or gross negligence of Smart Production Solutions.
- 11.4. For any right to compensation to arise, Smart Production Solutions must always be in default under Article 3.4 and the Client must have reported the damage to Smart Production Solutions as soon as possible, but within twelve (12) months after it occurs.
- 11.5. Insofar as persons hired by Smart Production Solutions for performing the Client's assignments wish to limit their liability in this regard, all assignments given to Smart Production Solutions include the authority to also accept such limitations of liability on behalf of those persons. Smart Production Solutions cannot be held liable for any unexpected failings of these persons.
- 12. Force majeure**
- 12.1. Insofar as not already established by law, Smart Production Solutions is not liable for any damage, nor is SPS obliged to fulfil any obligation, if the damage results from or the Parties are hindered by force majeure. For this purpose, force majeure includes power cuts, internet and/or other telecommunication connection failures, electricity supply and/or communication network interruptions, computer viruses, the failings of third parties hired by Smart Production Solutions, whether or not attributable, and all other circumstances beyond Smart Production Solutions' control.
- 12.2. If the period of force majeure lasts longer than two (2) months, or will definitely last at least that long, either Party may terminate the Agreement without being obliged to pay compensation to the other Party. If a force majeure situation arises, the Party invoking force majeure must notify the other Party of it in Writing as soon as possible, submitting the necessary evidence.
- 13. Intellectual property and indemnity**
- 13.1. All intellectual property rights relating to the Software that Smart Production Solutions provides to or develops for the Client, and to the Services and Documentation that Smart Production Solutions supplies, vest exclusively in Smart Production Solutions and/or third parties – insofar as third-party Software or

Documentation is involved. The Client acquires only a non-exclusive and non-transferable right of use for the term of the Agreement, subject to its full and punctual fulfilment of its obligations under the Agreement, these General Terms and Conditions and any applicable Supplementary Conditions for Use.

- 13.2. Unless agreed otherwise in the Agreement, the Client may only use the Software provided in and for its own organisation for the purpose intended in the Agreement. Any other use, including providing the Software to third parties, is not permitted without Smart Production Solutions' prior consent.
- 13.3. Smart Production Solutions indemnifies the Client against any third-party legal action based on the assertion that the Smart Production Solutions' Software infringes an intellectual property right applicable in the Netherlands, provided the Client (a) immediately informs Smart Production Solutions in Writing of the existence and content of the legal action; and (b) leaves handling the case, including reaching any settlements, entirely to Smart Production Solutions. For this purpose, the Client will provide Smart Production Solutions with the necessary powers of attorney, information and cooperation to defend itself against these legal actions, if necessary in the Client's name. This obligation to indemnify lapses if the alleged infringement relates to changes that the Client has made, or had third parties make, to the Software. If it is irrevocably established in law that Smart Production Solutions' Software infringes an intellectual property right belonging to a third party, or if Smart Production Solutions believes there is a good chance that such an infringement will occur, Smart Production Solutions will ensure, where possible, that the Client can continue to use the supplied, or functionally equivalent, Software undisturbed, for example by modifying the infringing parts or by acquiring a right of use for the Client. If, in its sole discretion, Smart Production Solutions cannot, or cannot other than in a way that is unreasonably and financially onerous, ensure that the Client can continue to use the supplied goods undisturbed, Smart Production Solutions will take back the supplied goods in return for a credit note for the acquisition costs less a reasonable user fee. Smart Production Solutions will make its choice in this regard only after consulting with the Client. Any other or more far-reaching liability or indemnity obligation of Smart Production Solutions for the infringement of a third party's intellectual property rights is excluded.
- 13.4. The Client realises that Smart Production Solutions provides third-party Software where SPS has or had no control or influence over the creation and/or adjustment of such Software. The indemnity by Smart Production Solutions in Article 14.4 therefore does not apply to third-party Software, which is subject to any indemnity conditions under the Supplementary Conditions for Use.
- 14. Confidentiality**
- 14.1. The Client must maintain the secrecy of all confidential information (rate agreements, software lists, documentation, benchmark tests, specifications, object codes, source codes and machine-readable copies of the software, including Authentication Tools) of Smart Production Solutions and/or third parties it has obtained under the Agreement or from another source. Information is deemed confidential if Smart Production Solutions has indicated this or if this follows from the nature of the information.
- 14.2. The Client will agree the same confidentiality obligation with its employees and/or third parties working for it, who can actually

gain access to the data referred to in the previous paragraph, and warrants to Smart Production Solutions that its employees and/or third parties will comply with this obligation and compensate Smart Production Solutions for all damage it suffers because of an unexpected breach of that obligation.

consultation will be settled by the competent judge of the 's-Hertogenbosch District Court, unless the Parties agree to mediation or arbitration for a specific dispute.

15. Processing of personal data

- 15.1. Personal data will be processed during the performance of the Agreement (e.g. of the Client's employees). For this purpose and based on the applicable privacy legislation, such as the Personal Data Protection Act (*Wet bescherming persoonsgegevens*) and the General Data Protection Regulation, the Client will be deemed the controller and Smart Production Solutions the processor.
- 15.2. The Client hereby instructs Smart Production Solutions to process such personal data on its behalf for performing the Agreement. Smart Production Solutions will process personal data only under a separately concluded processing agreement.
- 15.3. If a separate processing agreement is not concluded, Smart Production Solutions will (a) process the relevant personal data only for the assignment arising from the Agreement and otherwise process all personal data in accordance with the applicable laws and regulations. Notwithstanding the Client's own obligation to implement adequate security measures, Smart Production Solutions will (b) implement appropriate technical and organisational measures to protect the processing of personal data. The Client is (c) aware that Smart Production Solutions uses storage and other services of third parties for performing the Agreement and agrees to this in advance. Insofar as Smart Production Solutions (d) has personal data processed by one or more third parties, it will conclude a processing agreement with that third party. The Client is (e) entitled to verify, or have the fulfilment of these obligations by Smart Production Solutions verified. The associated costs are payable by the Client.
- 15.4. The Client warrants to Smart Production Solutions that the content, use and/or processing of the data are in accordance with the applicable laws and regulations, not unlawful and do not infringe any right of a third party. The Client indemnifies Smart Production Solutions and will hold SPS harmless against any legal action of one or more third parties, for whatever reason, in connection with these personal data processing operations.
- 15.5. If a breach of security measures unexpectedly occurs at Smart Production Solutions, SPS will inform the Client as soon as possible, notwithstanding its own obligations in that case to implement effective measures itself to eliminate the adverse consequences resulting from the incident as much as possible, and to limit further adverse consequences as much as possible. Smart Production Solutions will keep a log of the incidents referred to in the previous paragraph, as well as the measures implemented because of such incidents, and make this available for inspection at the Client's request. Insofar as the Client deems it necessary to inform the data subjects of one or more incidents as referred to in the previous articles, Smart Production Solutions will cooperate reasonably in that regard.

16. Applicable law and competent court

- 16.1. All Agreements and resultant or related obligations are governed exclusively by Dutch law. The applicability of the Vienna Sales Convention 1980 (CISG) is explicitly excluded.
- 16.2. All disputes arising from or related to the Agreement and these General Terms and Conditions that cannot be resolved in joint