

# **Standard Terms and Conditions of Adaptive Activity Network BV** **dated 22 MARCH 1996**

(revised for the Euro i per 1 January 2002)

## **Section 1 - OFFERS**

These standard terms and conditions apply to all offers and agreements for delivery of goods and/or services by Adaptive Activity Network B.V. ('A.A.N.') unless expressly agreed otherwise in writing. By accepting A.A.N.'s offer the Principal accepts these standard terms and conditions and they shall constitute part of the agreement between the parties. Reference to the Principal's own standard terms and conditions shall not be accepted by A.A.N.

All A.A.N.'s offers are based on delivery/performance under normal circumstances. Particulars given in software and/or other programs, catalogues, pictures, drawings, weights, measures and other (technical) information are not representative in minutia. A.A.N. and the manufacturers representing it reserve the right to modify the construction of the products to be delivered in so far as this does not impair their reliability and operation.

## **Section 2 - INDUSTRIAL AND INTELLECTUAL PROPERTY**

The Principal may not publish, copy, imitate nor disclose to third parties the particulars as mentioned in the preceding section, or to sell, let, alienate or otherwise encumber (the right of use of) the software and/or other programs, or to hand them to third parties or to alter them. The software source code shall not be made available to the Principal. Ownership of all rights of industrial and intellectual property concerning the software and/or other programs shall remain with A.A.N.

The Principal shall not remove indications of intellectual property. The Principal understands that the software and/or other programs contain confidential information and industrial secrets of A.A.N. A.A.N. may take technical measures for protecting the software and/or other programs. The Principal shall not infringe on A.A.N.'s intellectual property or of a third party in the matter of the products delivered.

## **Section 3 - PRICES**

All prices are exclusive of V.A.T.  
A.A.N. shall have the right the charge cost of transport in addition.

A.A.N. shall have the right to fully or partly charge on to the opposite party any changes in the cost price of its required performance occurring after the offer or the conclusion of the agreement because of changes in wages, cost price of raw or other materials, freight rates, social security contributions, (other) levies by the government or foreign exchange rates, or whatever circumstance. If this causes a price increase of over 10% of the total invoice value of the agreement, the opposite party shall have the right during a week following such on-charge to dissolve the agreement for such reason.

If A.A.N. charges on to the opposite party any price-increasing factors occurring within three months of the conclusion of the agreement, the latter shall have the right, if he is a private individual, during a week following such on-charge, to dissolve the agreement for such reason. A private individual shall be understood to be a natural person not acting in the pursuit of a profession or business.

## **Section 4 - PAYMENT**

Unless agreed otherwise payment shall be made within 8 days of the delivery of the hardware. If the hardware is installed by A.A.N., payment is to be made in two instalments, viz. 50% with the order and 50% on delivery. If the agreed credit term is exceeded the Principal shall be deemed to be in default ipso jure and shall, without any notice of default, owe interest on the outstanding amount from the due date of the debt at the rate of 1.5% per month, as well as all costs resulting from the Principal's late payment, including judicial as well as extrajudicial collection charges. The extrajudicial collection charges shall be 15% of the amount of the debt with a minimum of i 500. Each time after a year the amount on which default interest is charged shall be increased by the interest due for such year.

## **Section 5 - DELIVERY**

Under no circumstances shall the time of delivery run earlier than the time A.A.N. is in possession of all the documents and particulars required for the order, such as, but not limited to, drawings, measurements, etc., in the discretion of A.A.N. Exceeding the time of delivery shall never give right to claim damages nor does it entitle the Principal to non-compliance with any commitment towards A.A.N., unless the Principal can prove that earlier performance is essential to him in his conduct of business. In such case dissolution shall take place in writing not later than within five days from A.A.N.'s reliance on the suspension. A.A.N. shall have the right to make partial deliveries and to invoice partial deliveries.

## **Section 6 - COMPLAINTS**

The Principal shall examine the delivered goods immediately on or after delivery. Any complaints by the Principal about the delivery, including complaints about discrepancies in the quality of the goods, which can instantly be ascertained in a thorough examination, shall be submitted to A.A.N. in writing. within five days of the delivery or within five days after the goods have been made available to the Principal. If the Principal fails to submit a complaint in writing to A.A.N. within the said period of five days, the goods delivered by A.A.N. shall be considered to have been approved and accepted by the Principal. If the Principal's complaint is considered well-founded, A.A.N. shall have the right - instead of repair or replacement of the goods or delivery of an additional quantity - to credit the Principal's account for the short value to a maximum of the invoice amount.

## **Section 7 - GUARANTEE**

The reliability of the goods delivered and/or installation work is guaranteed by A.A.N. for a period of twelve months. If the duration of the manufacturer's guarantee for the goods delivered is shorter than the said period, the manufacturer's guarantee period shall apply. The guarantee period shall commence on the day of delivery. Under the guarantee A.A.N. is only liable for defects reported to A.A.N. within the guarantee period and of which the Principal proves that they have arisen within the guarantee period as a direct consequence of faulty construction and/or the use of inferior materials. A.A.N.'s obligations under such guarantee do not extend beyond replacing or repairing the defective product free of charge, in A.A.N.'s discretion. Cost of wage and transport resulting from the replacement or repair of defective parts shall be borne by the Principal. The Principal shall at all times require A.A.N.'s express approval in writing for repair, replacement and/or maintenance by third parties, on penalty of cancellation of the guarantee. A.A.N. shall never be liable for defects resulting from normal wear, improper use or improper or incorrect maintenance or repair/replacement and/or maintenance etc. by third parties.

## **Section 8 - LIABILITY**

A.A.N.'s liability shall be limited to the performance of what it has undertaken under the guarantee. Any further liability, either for direct or for indirect damage, costs and interests is expressly excluded. Except for product liability in terms of Volume 6 Chapter 3 of the Civil Code, any other liability on the part of A.A.N. shall always be limited to:

- a. the invoice amount or in the absence thereof the value of the agreed performance;
- b. - in the case of partial deliveries - the invoice amount, or in the absence thereof, the value of the relevant performance.

The provisions of this section shall not apply in case imperative legal provisions (like the product liability regulations) prescribe otherwise.

## **Section 9 - RETENTION OF TITLE**

Goods delivered shall remain A.A.N.'s property until the time when all the Principal's debts have been fully paid. In case of the Principal's non-compliance with any obligation towards A.A.N., the latter shall have the right - without any prior notice of default - to recover the goods. The retention of title shall also apply to all claims it may obtain on the Principal because of the Principal's failure to meet one or more of his obligations under the agreement. As long as the ownership of the goods delivered has not passed to the Principal, the Principal may not dispose of such goods or to grant a third party any right thereon, unless A.A.N. has expressly given permission thereto in writing.

## **Section 10 - RIGHT OF PLEDGE AND POSSESSORY LIEN**

In case of late performance of his payment obligations towards A.A.N., the Principal shall - if he has delivered on goods delivered by A.A.N. to third parties - at the first request to that effect, pledge to A.A.N. all his rights against such third parties resulting from the on-delivery as security for all A.A.N.'s claims on the Principal. To meet such obligation the Principal already now for then pledges all his rights against the said third parties resulting from on-deliveries. As soon as the Principal fails to meet his payment obligations towards A.A.N. in time, A.A.N. shall have the right to inform the said third parties of the present pledge in order to establish the pledge. The Principal shall render every assistance required, particularly by immediately stating - at A.A.N.'s first request to that effect - the names and addresses of all third parties to whom he has delivered on the goods delivered by A.A.N., as well as all rights he has obtained against third parties because of such on-deliveries.

## **Section 11 - FOREIGN COUNTRIES**

The Dutch text of these Standard Terms and Conditions shall prevail over translations thereof. Unless agreed otherwise, prices quoted for deliveries abroad are ex warehouse. In the case of goods delivered and/or installation work performed abroad, the extra cost incurred in A.A.N.'s performance of its guarantee obligations, such as transport inter alia, shall be for account of the Principal.

## **Section 12 - APPLICABLE LAWS AND DISPUTES**

All agreements to which these terms and conditions fully or partly apply, shall always be subject to the laws of the Netherlands. All disputes resulting from offers made by A.A.N. and/or agreements concluded by A.A.N. and the Principal, shall be submitted to the judgement of the District Court of Dordrecht.

## **Section 13 - VALIDITY**

If any provision of these standard terms and conditions is fully or partly invalid for whatever reason, the agreement and the rest of the standard terms and conditions shall remain in full force, while as to the invalid provisions the parties shall be deemed to have agreed that which lawfully comes closest to the tenor of the invalid provisions. If A.A.N. out of courtesy or for other private reasons of a commercial nature does not in the first instance resort to any applicable provisions of these standard terms and conditions towards the Principal, it shall not in consequence lose the right, if it cannot reach an agreement with the Principal, to resort as yet to any applicable provisions of these standard terms and conditions at a later stage.