

GENERAL TERMS AND CONDITIONS TIE KINETIX 2017

1. GENERAL

1.1 Applicability

- 1.1.1 These General Terms and Conditions shall apply to all proposals, offers, negotiations, legal relationships and agreements under which TIE Kinetix NV, or one of its subsidiaries anywhere in the world (hereinafter referred to as "TIE Kinetix"), provides goods and/or services of any nature to the Client, irrespective of whether these are provided pursuant to a written or oral agreement between the Client and the respective TIE Kinetix organization as mentioned in the proposal, offer or otherwise.
- 1.1.2 Any purchase conditions or other conditions of the Client or third parties shall not apply, even not in case these purchase conditions or other conditions are referred to in a purchase order or otherwise.
- 1.1.3 Changes, derogations and additions to these General Terms and Conditions and/or the agreement(s) concluded between TIE Kinetix and the Client shall only be valid if expressly agreed and recorded in writing by TIE Kinetix. If, and to the extent that, there are conflicts between the agreement(s) concluded between TIE Kinetix and the Client and the General Terms and Conditions, the provisions of the agreement(s) concluded between TIE Kinetix and the Client shall prevail.
- 1.1.4 In the event that one or more of the provisions of these General Terms and Conditions and/or the agreement(s) concluded between TIE Kinetix and the Client are void, or will be void, the other provisions of the General Terms and Conditions and/or the agreement(s) concluded between TIE Kinetix and the Client shall remain in full effect and force. TIE Kinetix and the Client shall consult on the provisions that are void or will be void in order to negotiate replacement provisions. TIE Kinetix and the Client will aim to maintain the goal and the purpose of the provisions which are void or will be void, to the extent possible.
- 1.1.5 At all times TIE Kinetix has the right to make amendments and/or additions to the General Terms and Conditions. The Client will be informed of the amendments and/or additions via the regular communication with the Client and/or via a notification on the invoice and/or otherwise. The amended and/or supplemented General Terms and Conditions shall apply unless an objection in writing has been lodged against one or more amendments and/or additions, within 30 days of the receipt of the notification by the Client of the amended and/or supplemented General Terms and Conditions.
- 1.1.6 Only the law of the country where the delivering TIE Kinetix subsidiary resides, shall apply to all agreement(s) concluded between TIE Kinetix and the Client (including these applicable General Terms and Conditions). The applicability of the Vienna Sales Convention is expressly excluded. Where relevant, these General Terms and Conditions contain specific clauses that only apply for the country as indicated in the clause.
- 1.1.7 Any dispute about, and/or as a result of, (an) agreement(s) concluded between TIE Kinetix and the Client (including these applicable General Terms and Conditions) shall exclusively be submitted to the competent Court in the region where the respective TIE Kinetix subsidiary resides, unless the Parties later agree to refer the dispute to Alternative Dispute Resolution.

1.2 Conclusion of the agreement

- 1.2.1 Any offers, oral promises, assignments and other expressions of any nature whatsoever from employees and representatives of TIE Kinetix are without obligation unless expressly proposed and confirmed by TIE Kinetix in writing.
- 1.2.2 A proposal submitted by TIE Kinetix shall be valid for a period of thirty (30) days.
- 1.2.3 TIE Kinetix shall only undertake to execute the agreement(s)

concluded between TIE Kinetix and the Client after a duly signed copy of a proposal submitted by TIE Kinetix has been received by TIE Kinetix. If the Client fails to return the signed proposal to TIE Kinetix, the Client accepts the contents of the proposal submitted by TIE Kinetix by, and at the time of, payment of the fees to TIE Kinetix.

- 1.2.4 The Client guarantees the accuracy and completeness of the requirements, specifications, and data stated by, or on behalf of, the Client, on which TIE Kinetix bases a proposal.
- 1.2.5 Data, information, and results included in drawings, pictures, catalogues, websites, advertising materials, ROI calculators, and such are non-binding.
- 1.2.6 Export Compliance. All deliveries of TIE Kinetix are subject to the export laws and regulations of the United States. Client represents that it is not named on any U.S. government denied-party or restricted-party list. Client shall not require, encourage or solicit the attendance of any events or other use of deliveries by individuals in a U.S. embargoed country or region, or use the Services in violation of any U.S. export law or regulation.
- 1.2.7 Anti-Corruption. Client affirms that it has not and agrees that it will not, in connection with the purchase of and the use of the deliveries contemplated by the relevant agreement or in connection with any other business transactions involving TIE Kinetix, make or promise to make any payment or transfer anything of value, directly or indirectly: (i) to any governmental official or employee (including employees of government corporations or instrumentalities); (ii) to any officer, director or employee of TIE Kinetix; or (iii) to any other person or entity, if such payment or transfer would violate the laws of the country in which made or jurisdiction in which Client or TIE Kinetix operates or conducts commerce, or the laws of the United States, including but not limited to the U.S. Foreign Corrupt Practice Act ("FCPA"), 15 U.S.C. § 78m, 78dd-1, 78dd-2, and 78dd-3.

1.3 Duration of the agreement; termination

- 1.3.1 The agreement(s) concluded between TIE Kinetix and the Client will be concluded for the duration agreed between TIE Kinetix and the Client, failing which a period of thirty-six (36) months shall apply to a Software as a Service ("SaaS Agreement"), a Hosting Agreement for Managed Services or a maintenance agreement and an indefinite period to another agreement. Reference is made, inter alia, to the articles 1.3.5, 1.5.1, 1.5.3, 1.7.4, 1.9.2, 1.10, 3.1.11, 4.1.8 and 4.4.4 of the General Terms and Conditions.
- 1.3.2 The agreement(s) with an agreed duration (such as SaaS Agreements, Hosting Agreements or maintenance agreements), will always be renewed automatically and therefore tacitly extended for a period of twelve (12) months, unless the agreement(s) are terminated in accordance with article 1.3.3.
- 1.3.3 Notice of termination of the agreement(s) concluded between TIE Kinetix and the Client may be given by both TIE Kinetix and the Client and shall be given in writing. The notice of termination must be received by the other Party no later than ninety (90) calendar days before the expiry date of the duration of the relevant agreement.
- 1.3.4 The Client may only terminate the agreement(s) concluded between TIE Kinetix and the Client in the cases referred to in these General Terms and Conditions and therefore does not have the right to early termination of the agreement(s) for a definite period of time concluded between TIE Kinetix and the Client, with the exception of mandatory exceptions and exceptions set out in the articles 1.3.5 and 2.2.2 of the General Terms and Conditions.
- 1.3.5 Each of the Parties may terminate the agreement(s) concluded between TIE Kinetix and the Client with immediate effect, in whole or in part, if the other Party has been granted a moratorium, if a bankruptcy petition has been filed for the other Party or if the other Party's company has been dissolved or terminated. Reference is made to the articles 3.1.13, 4.1.12, 4.3.8 and 4.9.7 of the General Terms and Conditions.

- 1.3.6 After termination of the agreement(s) concluded between TIE Kinetix and the Client, the Client cannot derive any rights from the relevant agreement, without prejudice to the continuation of the obligations of TIE Kinetix and the Client that by their nature are intended to continue after termination of the agreement, for instance, but not limited to, the obligation of confidentiality and property rights (Reference is made to the articles 1.6 and 1.11 of the General Terms and Conditions).
- 1.3.7 TIE Kinetix shall not be liable to refund any amounts received or to pay any damages arising from the termination of the agreement(s) concluded between TIE Kinetix and the Client.
- 1.4 Retention of title and rights**
- 1.4.1 All results of the delivered services and goods delivered to the Client will remain the property of TIE Kinetix until all amounts for the goods and/or services delivered or to be delivered under the agreement, the related facilities and activities and all other amounts the Client is due as a result of failure to fulfill its obligations, have been paid to TIE Kinetix in full.
- 1.4.2 Rights (including, but not limited to, user rights to software), if applicable, will always be granted to the Client under the suspensive condition that the Client pays the agreed fees in time and in full. If TIE Kinetix and the Client have agreed on a periodic payment obligation for the Client, the Client will be entitled to the right as long as the Client fulfills its periodic payment obligations.
- 1.4.3 In the context of the agreement(s) concluded between TIE Kinetix and the Client, TIE Kinetix may retain the goods received or generated, including software, data, documents, data files and (interim) results of the services provided by TIE Kinetix, in spite of an existing obligation to surrender or transfer, until the Client has paid TIE Kinetix all outstanding amounts.
- 1.5 Cooperation by the Client; (duty of) disclosure**
- 1.5.1 The agreement(s) concluded between TIE Kinetix and the Client will be executed by TIE Kinetix on the basis of the requirements, specifications and data provided to TIE Kinetix by, or on behalf of, the Client. Should there be any interim changes or new facts in requirements, specifications, and data provided earlier, TIE Kinetix at all times, after consultation with the Client, will have the right to terminate the relevant agreement or to amend the agreement in accordance with the new conditions. Reference is made to article 1.10.2 of the General Terms and Conditions.
- 1.5.2 For a proper performance of the agreement(s) concluded between TIE Kinetix and the Client, the Client shall always provide TIE Kinetix in time with useful and necessary data, documents, hardware, software, websites, data files and other products and/or materials. The Client shall implement all necessary updates and provide full cooperation, including providing access to its buildings and making the relevant employees available if so required by TIE Kinetix. If the Client, in the context of providing cooperation to the performance of the agreement, uses its own personnel, the personnel shall have the required know-how, experience, abilities and quality. Reference is made to the articles 3.1.11 and 4.1.8 of the General Terms and Conditions.
- 1.5.3 TIE Kinetix has the right to terminate the agreement and/or postpone the performance of the agreement, in whole or in part, if the Client does not provide TIE Kinetix in time, in accordance with the agreement(s) or not in accordance with the minimum specifications, with the necessary data, documents, hardware, software, websites, data files and other products and/or materials, services to be provided by the Client, updates to be implemented or data to be provided, for the performance of the agreement(s) concluded between TIE Kinetix and the Client or if the Client otherwise does not fulfill its duty of disclosure or cooperation. Reference is made to article 1.10.2 of the General Terms and Conditions. TIE Kinetix has the right in the event of postponement to charge the resulting costs incurred in accordance with its current rates.
- 1.5.4 In the event that employees of TIE Kinetix perform work at the location of the Client, the Client shall, free of charge, provide facilities which are reasonably required by the employee, such as working space with computer, data and telecommunication facilities complying with all current (legal) requirements and regulations regarding working conditions. The Client shall indemnify TIE Kinetix for any claims from third parties, including employees of TIE Kinetix that have incurred damage as a result of the performance of the agreement(s) concluded between TIE Kinetix and the Client, which damage is a result of acts or omissions of the Client or unsafe conditions in the Client's organization. The Client shall inform in a timely manner the employees of TIE Kinetix to be aware of the house rules and safety rules that apply within its organization. If for the performance of the agreement(s) concluded between TIE Kinetix and the Client telecommunication facilities are used, the Client shall be responsible for the proper choice of the facilities required and the timely availability of these facilities with the exception of the facilities in direct use and under direct control of TIE Kinetix.
- 1.5.5 If the Client makes functional improvements or other changes, in accordance with the mandatory provisions from the applicable Copyright Laws, to deliveries from TIE Kinetix, the Client shall inform TIE Kinetix of these improvements or changes before the actual improvement or change has been made. This expressly applies to the cases in which TIE Kinetix provides maintenance, support or other services relating to the deliveries to the Client. Reference is made to the articles 1.11.7 and 1.11.8 of the General Terms and Conditions.
- 1.5.6 TIE Kinetix can always set (further) requirements for communication between the Parties or the performance of legal acts (by e-mail).
- 1.6 Nondisclosure of confidential data, taking over personnel**
- 1.6.1 Each of the Parties guarantees that all data received from the other Party, of which the Party is aware or (reasonably) should be aware that the data is confidential, remains confidential unless there is a statutory duty to disclose the data. The Party receiving the confidential data shall only use the data for the purpose they were provided for and for the performance of the agreement(s) concluded between TIE Kinetix and the Client. Each of the Parties agree to undertake and maintain the confidentiality of all data and information relating to each other's organization, each other's clients, the files, the software and the hardware of which the Parties become aware while performing work for each other or for customers of the Client. Data will in any case be considered confidential if one of the parties designates the data as confidential.
- 1.6.2 Each of the Parties shall during the term of the agreement(s) concluded between TIE Kinetix and the Client and one (1) year after termination thereof, only with prior written consent of the other Party hire, or otherwise have directly or indirectly work for them, employees from the other Party who are or were involved in the conclusion or performance of the agreement(s) concluded between TIE Kinetix and the Client. The above-mentioned consent may have conditions attached. The Client shall not refuse TIE Kinetix its consent on unreasonable grounds.
- 1.7 Liability; indemnity**
- 1.7.1 TIE Kinetix cannot be held liable and will not guarantee on the basis of the agreement(s) concluded between TIE Kinetix and the Client or otherwise, the adequacy, completeness or correctness of any data and information provided by TIE Kinetix and/or by employees from TIE Kinetix to the Client. TIE Kinetix cannot be held liable and does not guarantee on the basis of the agreement(s) concluded between TIE Kinetix and the Client or otherwise relating to the suitability for a particular purpose or relating to the usability of data or information provided by TIE Kinetix.
- 1.7.2 The total liability of TIE Kinetix for damages irrespective of the ground for legal action for damages would be based on, as a result of, or related to deliveries from TIE Kinetix or culpable failure in the performance of the agreement(s) concluded between TIE Kinetix and the Client, is limited with due observance of the articles 1.7.3, 1.7.4,

- 1.7.5, 1.7.7 and 1.7.8 of the General Terms and Conditions, to payment of the direct damage to the maximum amount stipulated for the relevant agreement and compensations (excluding VAT) paid by the Client. If the relevant agreement is also a continuing performance contract, with an actual or contractual duration of more than one (1) year, the compensation stipulated for the agreement will be set at the total of the compensations stipulated (excluding VAT) and paid by the Client for the period of one (1) year directly preceding the moment the damage arose.
- 1.7.3** TIE Kinetix's total liability with respect to direct damage for whatever reason will never exceed € 500,000 in Europe and \$ 500,000 in the USA. TIE Kinetix's total liability for damage arising out of death or bodily injury, contrary to the foregoing sentence, will never exceed € 1,250,000,- in Europe and \$ 1,250,000,- in the USA.
- 1.7.4** Direct damage will only be taken to mean, the reasonable costs incurred by the Client to determine the cause and the extent of the damage, the reasonable costs incurred by the Client to prevent or limit the damage, the reasonable costs the Client would have to incur to have TIE Kinetix's performance meet with the agreement(s) concluded between TIE Kinetix and the Client (these alternative damages, however, will not be paid if the relevant agreement will be terminated by or on the claim of the Client) and the reasonable costs incurred by the Client for keeping the old system operational longer out of necessity (these alternative damages, however, will not be paid if the relevant agreement is terminated by or on the claim of the Client).
- 1.7.5** TIE Kinetix's liability for indirect damage (including but not limited to special damage, consequential loss, lost profit, missed savings, loss incurred, less goodwill, loss due to business interruption, damage as a result of corruption, destruction or loss of data or documents, capital costs, cost of replacement goods, facilities or services, damage as a result of claims from customers or partners of the Client, damage related to claims from third parties against the Client, damage related to the use of goods, materials or software from third parties the Client ordered TIE Kinetix to use, damage related to or arising from the organization, the performance or the use of deliveries made by TIE Kinetix, damage related to the engagement of suppliers the Client ordered TIE Kinetix to use and all forms of damage other than referred to in article 1.7.4 of the General Terms and Conditions) for any reason whatsoever and irrespective of the ground the claim for damages is based on (for instance on the basis of breach of contract or unlawful act) even when TIE Kinetix has been advised about the possibility of such damage, is excluded.
- 1.7.6** With the exception of the cases referred to in articles 1.7.2, 1.7.3 and 1.7.4 of the General Terms and Conditions TIE Kinetix has no liability for damages, irrespective of the grounds a claim for compensation could be based upon.
- 1.7.7** TIE Kinetix's liability for a culpable failure to fulfill the obligations arising from the agreement(s) concluded between TIE Kinetix and the Client will only arise if the Client gives notice of default to TIE Kinetix in writing, stating a reasonable period to cure the failure to fulfill the obligations (of at least 30 days) and TIE Kinetix even after the expiry of this period still culpably fails to fulfill its obligations arising from the agreement(s). The notice of default must state a description as detailed as possible of the failure to allow TIE Kinetix to respond adequately.
- 1.7.8** A condition for any right to damages is always that the Client immediately after the moment the Client discovered the damage or reasonably could have discovered the damage, informs TIE Kinetix in writing and takes the measures that will limit the damage to the extent possible. Any claim for damages against TIE Kinetix will expire by the mere lapse of twelve (12) months after the damage has arisen.
- 1.7.9** TIE Kinetix does not accept any liability for damage of any nature arisen by software of third parties ("Third Party Software"), delivered by TIE Kinetix to the Client. Reference is made to the articles 1.11.7, 3.1.12, 4.1.9, 4.3.6, and 4.6.4 of the General Terms and Conditions.
- 1.8 Transfer**
- 1.8.1** The agreement(s) concluded between TIE Kinetix and the Client and the rights and/or obligations arising thereof cannot be transferred and/or sold by the Client to a third party or in any manner be made available to a third party without the prior written approval of TIE Kinetix.
- 1.8.2** TIE Kinetix reserves the right to transfer any agreement(s) concluded between TIE Kinetix and the Client and/or the rights and/or obligations thereof in whole or in part to a TIE Kinetix group company.
- 1.9 Force majeure**
- 1.9.1** Both Parties are not held to fulfill any obligation when prevented from complying by force majeure. Force majeure includes inter alia force majeure of suppliers of TIE Kinetix, not properly fulfilling obligations by suppliers the Client ordered TIE Kinetix to use and goods, materials, software and hardware the Client ordered TIE Kinetix to use being defective, government measures, power failure, internet failure, failure of computer networks or telecommunication facilities, war, lock-in, strike, general transportation problems, unavailability of one or more employees of TIE Kinetix and other circumstances outside the control of TIE Kinetix and business risks. In a situation as described in article 1.5.3 of the General Terms and Conditions the Client cannot invoke force majeure.
- 1.9.2** If a situation of force majeure has lasted for over ninety (90) calendar days, each of the parties has the right to terminate in writing the agreement(s) concluded between TIE Kinetix and the Client. A force majeure situation begins the moment the Party invoking force majeure informs the other Party hereof.
- 1.9.3** TIE Kinetix reserves the right, if a force majeure situation occurs, to claim payment for work already performed before the force majeure situation became known. Reference is made to article 1.10.2 of the General Terms and Conditions.
- 1.10 Termination of the agreement**
- 1.10.1** Each of the Parties has the right to terminate the agreement(s) concluded between TIE Kinetix and the Client in writing, without judicial intervention, in whole or in part, if the other Party, even after a detailed, written demand stating a reasonable period still fails to fulfill its obligation (Reference is made to article 1.7.7 of the General Terms and Conditions) or the other Party offers the first Party or its employees a reward or a gift (not including regular promotion articles) or submits another incorrect proposal (Reference is made to article 1.2.7). Article 1.3.6 of the General Terms and Conditions expressly applies.
- 1.10.2** If the Client at the moment of termination already received work for the performance of the agreement(s) concluded between TIE Kinetix and the Client, this work and the related payment obligation cannot be revoked unless the Client proves that TIE Kinetix is in default with respect to the work. Amounts invoiced by TIE Kinetix before termination relating to work already performed or delivered by TIE Kinetix under the agreement(s) concluded between TIE Kinetix and the Client, will remain payable with due regard for the provisions of the previous sentence and will be directly due and payable on the moment of termination. TIE Kinetix shall not be liable to refund any amounts received as a result of the termination of the agreement(s) concluded between TIE Kinetix and the Client. If the Client in the event of a culpable failure in the performance of the agreement concluded between TIE Kinetix and the Client proceeds to termination as referred to in article 1.10.1 of the General Terms and Conditions, the Client thereby waives (any) right to damages. Reference is made to article 1.7.4 of the General Terms and Conditions.
- 1.11 Intellectual and industrial property rights**
- 1.11.1** All intellectual and industrial property rights to the software, websites, data files, hardware or other material like analyses,

- designs, documentation, reports, offers, and the preparatory material thereof developed for the Client or made available to the Client, are owned by TIE Kinetix, its licensors or suppliers. The Client will receive the user rights expressly granted in the license agreement and/or SaaS agreement only.
- 1.11.2** For every assignment performed by TIE Kinetix, no matter where or when, irrespective whether it regards the delivery of a service, an existing product or a product still to be developed, all arising intellectual property rights, industrial property rights and other rights will remain with TIE Kinetix, its licensors or its suppliers.
- 1.11.3** If in derogation from the provisions of article 1.11.1 and 1.11.2 of these General Terms and Conditions TIE Kinetix is willing to undertake the transfer of an intellectual or industrial property right with respect to specific software, websites, platforms, data files or other materials developed for the Client, such an obligation can only be established in writing and expressly confirmed by the Executive Board of TIE Kinetix NV. If the parties expressly agree in writing that intellectual property rights, industrial property rights or other rights to software, websites, data files or other materials delivered by TIE Kinetix will be transferred to the Client, this does not affect TIE Kinetix's right to apply parts, general principles, ideas, designs, standards, protocols, algorithms, documentation, works, computer languages and the like forming the basis of the developments, without any limitations, for other purposes, to use and to exploit these, either for TIE Kinetix or for third parties. A transfer of intellectual property rights or industrial property rights also does not affect TIE Kinetix's right to undertake development activities for TIE Kinetix or for third parties similar to the activities performed or being performed for the Client.
- 1.11.4** The Client is not allowed to remove or change any notice regarding the confidential nature or relevant copyrights, trademarks or other intellectual property rights or industrial property rights from the software, websites, data files or materials or have a third party perform these activities.
- 1.11.5** TIE Kinetix is allowed to take (technical) measures to protect the software or in view of the agreed limitations regarding the duration of the right to use the software. The Client is not allowed to remove or evade such a technical measure or to have it removed or evaded. If because of the protective measures the Client is not able to make a back-up copy of the medium the software is delivered on, TIE Kinetix will supply a back-up copy when requested. Reference is made to article 3.1.7 of the General Terms and Conditions.
- 1.11.6** TIE Kinetix shall indemnify the Client against any action by a third party insofar as based on the allegation that the software developed by TIE Kinetix infringes an intellectual property right from a third party on the basis of a copyright applying in the country the TIE Kinetix subsidiary resides in, provided that the Client informs TIE Kinetix immediately in writing about the existence and the contents of the claim and the Client leaves the handling of the case, including negotiations on a settlement, entirely to TIE Kinetix. For this purpose the Client will provide TIE Kinetix with the required powers of attorney, information and cooperation to enable TIE Kinetix to put up a defense against this action, when necessary in the name of the Client. If such an action is commenced or in TIE Kinetix's opinion may be commenced, TIE Kinetix reserves the right to take all legally permitted measures, including acquiring the licensing or sublicensing rights to the software or to change the software to such an extent that it no longer infringes a copyright that applies in the country the TIE Kinetix subsidiary resides in.
- 1.11.7** Contrary to article 1.11.6 of the General Terms and Conditions TIE Kinetix will not indemnify the Client against an action to the extent that this action is based on the allegation that the Third Party Software delivered to the Client infringes an intellectual property right, industrial property right or another right applying in the country the TIE Kinetix subsidiary resides in or elsewhere or in case the Client has made a change to the software or had a change made to the software.
- 1.11.8** If TIE Kinetix, the Client or third parties implement functional improvements or other changes to deliveries from TIE Kinetix, the intellectual property rights, industrial property rights and other rights to the goods improved or changed will remain unchanged with TIE Kinetix. Reference is made to article 1.5.5 of the General Terms and Conditions.
- 1.11.9** The Client guarantees to have the full ownership and/or an unlimited user right to all (intellectual property) rights to the material and the data (Selected Content) provided to TIE Kinetix, directly or indirectly, to perform the agreement(s) concluded between TIE Kinetix and the Client. Selected Content may include content from the Client or from a third party, with respect to: i) specifications, confirmations, orders, deliveries, invoices, or any other communication between the Client and a third party with respect to products or services of the Client or third parties, or; ii) business information, business leads, business prospects, business related personal & contact information, information related to business processes, information and analytics related to (the use of) websites, or; iii) description of products, services including without limitation, part numbers, descriptions, specifications, text files, HTML, graphics, ads, flash banners, price catalogs, images, key selling points, user manuals, marketing materials, product tours, videos, graphic files, sound, style, logos, distinct brand elements, trademarks and other creative assets related to such products and services. The Client guarantees that the Selected Content, the registration, the use, the storage and/or the processing of the Selected Content and related material do not infringe any right of a third party. The responsibility for the Selected Content and related material (including but not limited to personal data) processed with the use of deliveries from TIE Kinetix, rests exclusively with the Client. For purpose of the applicable Personal Data Protection Laws and/or other legislation in the areas of privacy and/or protection of personal data, TIE Kinetix will be considered to be the processor and the Client to be the party responsible. The Client indemnifies TIE Kinetix against any legal action from third parties, of whatever nature, relating to these data.
- 1.11.10** The Client assumes full responsibility with respect to the correctness and completeness of the Selected Content and compliance with Client's legal and tax obligations, while using the software, the SaaS and/or the TIE Kinetix FLOW Platform. Client shall indemnify TIE Kinetix against any action by a third party in any way related to compliance with Client's legal and tax obligations and/or the Selected Content.
- 1.11.11** Client hereby grants TIE Kinetix the right to use Client Information or Selected Content to the extent needed by TIE Kinetix to execute the Agreement. TIE Kinetix has no obligation, and expressly disclaims any obligation to review Client information or Selected Content, nor is TIE Kinetix responsible for compliance with Client's legal and tax obligations or the correctness and completeness of the Selected Content. In case the Selected Content is in violation with applicable law or in case a public authority requests so, TIE Kinetix is entitled to suspend the execution of the Agreement and/or remove the Selected Content. In such case, TIE Kinetix will contact the Client in order to determine the appropriate steps to be executed.
- 1.11.12** The Parties acknowledge, that the security of transmissions over the internet cannot be guaranteed. TIE Kinetix will not be responsible for Client's access to the internet, for any interception or interruption of any communications through the internet, or for changes to or losses of Selected Content or data through the internet.

2. PRICES AND PAYMENTS

2.1 Prices and payments

- 2.1.1** All prices and rates are exclusive of value added tax (VAT) and other levies imposed, or to be imposed, by the government. The amounts due will be charged including value added tax (VAT) and including any other levies imposed, or to be imposed, by the government. All prices and rates are expressed in, and the Client shall make all payments in the currency of the country the delivering TIE Kinetix subsidiary is resided in.

- 2.1.2 The amounts due referred to in article 2.1.1 of the General Terms and Conditions can be increased by any order costs, dispatch costs and costs of third parties. An increase can also be charged if activities for the Client are performed outside TIE Kinetix's office. For activities performed outside TIE Kinetix's office, hourly wages, travel and waiting time allowances, travel costs and/or kilometer (in USA milage) allowances, hotel and subsistence expenses and any other costs related to such activities will be charged. The travel and waiting time allowance is 50% of the then current hourly wage, unless otherwise agreed. Additionally, an allowance of € 0.50 in Europe and \$ 0.50 in the USA will be charged for each kilometer (in USA mile) travelled, unless otherwise specified in the agreement. The calculation of the travel and waiting time allowance, the travel costs and/or kilometer / milage allowances, is based on the distance between TIE Kinetix's office and the agreed location where the activities for the Client have to be performed.
- 2.1.3 Invoices will be sent to the Client in PDF format. Invoices will be paid by the Client in accordance with the payment terms on the invoice. If payment by direct debit is prescribed, administrative costs can be charged if the Client does not give a mandate. If there is no specific arrangement and/or payment date, the Client shall pay the amounts due within thirty (30) days of the invoice date. The Client does not have the right to setoff or to suspend payment.
- 2.1.4 If the Client fails to pay the amounts due on time, the Client is in default without further notice of default being required. The Client then shall pay TIE Kinetix costs, both in and out of court, including all costs calculated by external experts, relating to the collection of all amounts the Client has to pay TIE Kinetix. Extrajudicial collection costs are 15% of the amount due with a minimum of € 600,- in Europe and a minimum of \$ 600,- in the USA. In any event, on the amount payable by the Client will be charged, as of the date on which the Client is in default, a percentage equaling the statutory interest. The Client shall also pay the costs incurred by TIE Kinetix of a failed Alternative Dispute Resolution if the Client by judgment has been ordered to pay, in whole or in part, the outstanding amount.
- 2.1.5 TIE Kinetix has the right to suspend its activities and other obligations until payment has been made in full without prejudice to the obligation of the Client to meet all its obligations.
- 2.1.6 The above provisions do not affect TIE Kinetix's other rights based on a breach of contract by the Client.
- 2.2 Price changes**
- 2.2.1 TIE Kinetix has the right to change all prices and rates by a percentage equaling the price index figure per hour for commercial services including exceptional remunerations as published by the CBS [*Statistics Netherlands*] (or similar index and agencies in France, Germany or the USA, in case of change of prices in these countries) on the basis of 2016=100. Price changes and rate changes will be made once a year.
- 2.2.2 If TIE Kinetix changes the prices and rates more than once a year or increases the prices and rates by a percentage exceeding the percentage referred to in article 2.2.1 of the General Terms and Conditions and the Client does not agree with the price change and the rate change, the Client has the right, within thirty (30) days after the start of the price change or the rate change, to terminate the relevant agreement at the date on which the change would take effect.
- 2.3 Additional work; actual costs**
- 2.3.1 If TIE Kinetix, at the request, or with prior consent of the Client, has performed work or has performed other activities outside the content or the extent of the work and/or activities agreed upon (additional work), this work or these activities will be paid in accordance with the agreed rates. If there are no agreed rates TIE Kinetix's standard rates will apply.
- 2.3.2 The Client accepts that work or activities as referred to in article 2.3.1 of the General Terms and Conditions may influence the agreed or expected time of completion of the service and the mutual responsibilities of the Client and TIE Kinetix. The fact that during the performance of the agreement(s) concluded between TIE Kinetix and the Client there is (a need for) additional work, will not constitute a ground for the Client to terminate, suspend, or rescind the relevant agreement, unless mandatory provisions provide otherwise.
- 2.3.3 All assessments, cost estimates and budgets provided by TIE Kinetix are only indicative unless TIE Kinetix has expressly stated otherwise in writing. The Client cannot derive any rights or expectations from assessments, cost estimates and budgets provided by TIE Kinetix. In the event that the Client has informed TIE Kinetix of the budget available to the Client, this shall not be considered to be a (fixed) price agreed between the Parties for the work and/or activities to be performed by TIE Kinetix. When possible and agreed in writing TIE Kinetix will inform the Client when an assessment, cost estimate and budget threatens to be exceeded.
- 2.3.4 If payment and/or the performance of services is/are made on the basis of actual costs, all hours actually worked and the costs will be charged after completion of the work. Therefore, the Client needs to be aware that there is a chance that the earlier estimate may be less than the actual hours worked and costs incurred.
- 3. SOFTWARE (license model)**
- 3.1 License to the software**
- 3.1.1 The use of TIE Kinetix's software is subject to the conclusion of a license agreement. The license agreement will take effect on the date of delivery of the software, on condition that the Client (also referred to as "Licensee") will make the agreed payments in time and in full. The user rights to the software including the related documentation granted by TIE Kinetix to the Client under a license agreement ("license") are non-exclusive and non-transferrable. A license is provided on an "as is" basis. A license always relates to the object code of the software only, the Licensee does not, in any event, acquire the right to the source code of the software.
- 3.1.2 The license fees are payable in advance on the date of delivery of the software. Article 1.4.2 of the General Terms and Conditions shall apply in this case.
- 3.1.3 A license has an indefinite duration, unless specific duration has been specified in the relevant license agreement.
- 3.1.4 A license includes the right to install the relevant software on one (1) computer or work system. To the extent that no other agreements have been made regarding this subject, the processing unit of the Licensee on which the software has been used first and the number of connections to the processing unit on the date of first use will be considered to be the processing unit and number of connections the user right has been granted for. In case of failure or replacement of the relevant processing unit, the software can be used on another processing unit, provided the use of the software will not be extended. The Licensee can obtain additional licenses for additional processing units.
- 3.1.5 The Licensee shall only let a third party host the software with prior written permission from TIE Kinetix, even when the relevant third party only hosts the software for the Licensee.
- 3.1.6 A license includes the right to upload and execute the relevant version of the software. Any other or further right is expressly excluded. The Licensee is strictly forbidden, in any manner whatsoever, to copy, duplicate, change, modify, reverse engineer and/or decompile the software or to have the software, copied, duplicated, changed, modified, reverse engineered and/or decompiled, unless expressly allowed pursuant to applicable Copyright Laws, or to use the software in accordance with the limitations as described in the agreement and the General Terms and Conditions.
- 3.1.7 The license is limited to making one (1) back-up copy of the medium (including the software) on which the software has been delivered,

- to the extent in accordance with Copyright Laws. The Licensee shall take over on a back-up copy all notices relating to intellectual copyrights and industrial copyrights. The Licensee is not allowed to set up a (virtual) back-up or test environment, unless an additional specific license has been granted for this purpose. Reference is made to article 1.11.5 of the General Terms and Conditions.
- 3.1.8** A license can be limited in the number of trading partners. The Licensee can obtain additional licenses for additional trading partners.
- 3.1.9** A license can be limited in the number of documents processed monthly. The Licensee can obtain additional licenses to process additional documents; these additional documents can be limited in the number of documents processed monthly or the number of documents per trading partner processed monthly.
- 3.1.10** A license is limited to using the software for its own use only; companies affiliated with the Licensee cannot use the license unless expressly agreed otherwise in writing. The Licensee is not allowed to sell, rent out, lease, sublicense, dispose of or grant restricted rights to the software or the license or in any manner or for any purpose make the software or the license available to third parties. The Licensee is forbidden from using the software or the license in the context of data processing for third parties (time sharing or computer service) or to grant third parties access to the software by means of an ASP model or a SaaS environment.
- 3.1.11** When the limitations referred to in the articles 3.1.4, 3.1.5, 3.1.6, 3.1.7, 3.1.8, 3.1.9 or 3.1.10 of the General Terms and Conditions are exceeded or when in another manner the software is improperly used, the license will be terminated automatically at the moment the limitations are exceeded. The Licensee knows that violation of the user limitation(s) not only constitutes an attributable breach in the performance of the agreement, but also an infringement of TIE Kinetix's intellectual property rights. The Licensee agrees with TIE Kinetix collecting information on the number of trading partners and the number of documents processed. If so requested, the Licensee shall immediately fully cooperate with an inspection conducted by, or on behalf of, TIE Kinetix into the compliance with the agreed user limitations in these General Terms and Conditions and/or the license agreement.
- 3.1.12** The software may contain Third Party Software. In this case, the Licensee does not obtain user rights to the Third Party Software by means of the license agreement concluded with TIE Kinetix. The relevant license conditions of the third party shall apply to the use by the licensee of Third Party Software. The Licensee implicitly accepts the relevant license conditions by the use of the software. TIE Kinetix is in no event liable towards the Licensee or the third party for any Third Party Software.
- 3.1.13** A license will be terminated if and on the moment the Licensee is granted a moratorium, if and on the moment a bankruptcy petition has been filed for the Licensee, if and on the moment the Licensee's company is wound up or terminated, if and on the moment the Licensee is taken over by another legal entity, if and on the moment the Licensee merges with another legal entity, if and on the moment the Licensee's company is divided or if and on the moment the decisive control over the Licensee's company changes in another manner.
- 3.1.14** After termination of the license agreement or termination of the license, the Licensee/Client cannot derive any rights from the license agreement, without prejudice to the continued existence of the obligations of TIE Kinetix and the Client which by their nature are meant to continue, for instance, but not limited to, the obligations on confidentiality and property rights (Reference is made to the articles 1.6 and 1.11 of the General Terms and Conditions). After termination of the license agreement or termination of the license, the Client shall destroy or return to TIE Kinetix the software including, if any, all (back-up) copies and, if applicable, provide TIE Kinetix with a confirmation of destruction.
- 3.1.15** TIE Kinetix shall not be held to refund amounts received or to pay any damages on account of termination of the license. Reference is made to article 1.3.7 of the General Terms and Conditions.
- 3.1.16** The provisions of article 1.11 of the General Terms and Conditions shall apply in full to the use of the software by the Licensee.
- 3.2 Delivery of the software**
- 3.2.1** TIE Kinetix will deliver the software to the Client in accordance with the specifications set by TIE Kinetix and on the medium determined by TIE Kinetix.
- 3.2.2** All (delivery) periods referred to or agreed by TIE Kinetix shall be determined to the best of its knowledge, based on the data provided to TIE Kinetix when entering into the relevant agreement. TIE Kinetix will make every reasonable effort to observe the agreed (delivery) periods to the extent possible. Delivery periods are therefore not considered to be strict deadlines for deliveries. Exceeding a (delivery) period referred to or agreed shall never constitute a failure by TIE Kinetix.
- 3.3 Guarantee on the Software**
- 3.3.1** The software is made available on an "as is" basis, therefore with all visible and invisible failures and defects and without any form of guarantee on the software, either implicitly or explicitly. TIE Kinetix therefore does not provide any guarantees that the operation of the software will be uninterrupted or free of failures or viruses, that the functions or performance of the software will comply with the requirements of the Licensee or that the software is suitable for a particular purpose or guarantees about the usefulness of the software. Furthermore, TIE Kinetix is not liable for any damage caused by delays in the delivery or providing of the software (Reference is made to article 3.2.2 of the General Terms and Conditions).
- 4. SERVICES**
- 4.1 Software as a Service (SaaS)**
- 4.1.1** The use of TIE Kinetix's software as a service and the TIE Kinetix FLOW Platform or other portal website is subject to acceptance of the "End User Terms FLOW Partner AutomationPlatform and services" (when first entering the FLOW Platform or portal website), and the conclusion of a SaaS Agreement. The SaaS Agreement takes effect the moment the Client has direct or indirect access to the service. With regards to the TIE Kinetix Business Integration solution the SaaS Agreement will take effect the first day of the month after the signing of the SaaS Agreement by the Client. The user's rights transferred by TIE Kinetix to the Client under the SaaS Agreement are non-exclusive and non-transferrable. The user's rights and the access to the service are provided on an "as is" basis.
- 4.1.2** The SaaS fees are also based on the user right to the service, the maintenance, the (estimated) intensity of the use (for instance the number of page views) and the (estimated) number of front office users. The SaaS fees shall be paid in advance every quarter unless expressly agreed otherwise in writing. Article 1.4.2 of the General Terms and Conditions shall apply in this case. At the end of the quarter a final account will be made of the actual use of the service.
- 4.1.3** The user right has a term of thirty-six (36) months. After the initial duration, the user right will be automatically renewed for consecutive periods of twelve (12) months (Reference is made to article 1.3.2 of the General Terms and Conditions), unless the SaaS Agreement concluded between TIE Kinetix and the Client on the basis of the relevant agreement or under article 1.3.3 of these General Terms and Conditions is terminated or has already been terminated, ended or cancelled.
- 4.1.4** The user right includes the right to use the service. The user right also includes the right to maintenance of the software. Reference is made to article 4.3.1 of the General Terms and Conditions. The available SaaS services can be divided into shared SaaS and dedicated SaaS. TIE Kinetix can make changes to the content or

extent of the shared SaaS as it sees fit. If such changes lead to a change of the current procedures of the Client, TIE Kinetix will inform the Client as timely as possible.

- 4.1.5 If the Client wants to register new users as authorized users for the back office ("Authorized Users"), this can be done by informing TIE Kinetix in writing but only as long as the maximum number of Authorized Users as referred to in the SaaS Agreement has not been reached. The Client will treat the access and identification codes with confidentiality and with care and will solely inform the Authorized Users. In case of improper use of access or identification codes, the Client will inform TIE Kinetix immediately. TIE Kinetix shall not be liable for damage or costs as a result of improper use of access or identification codes.
- 4.1.6 The user right is limited to the use of the service only for the Client's own business operations unless for the use by third parties (including, but not limited to, companies affiliated with the Client) an additional specific user right has been granted. The Client is not allowed to sell, rent out, lease, license, dispose of or grant restricted rights to the service, the software or the access or identification codes of an Authorized User or in any manner or for any purpose to make these available to third parties or to use these in the context of the processing of data for third parties (time sharing or computer service), without prior written permission from TIE Kinetix.
- 4.1.7 The Client shall not directly or indirectly use the service or the software with and/or for violation of any law or regulation that applies to the Client. The Client also shall not, directly or indirectly, use the service or the software with and/or for the sale of goods regulated by the government, goods forming a risk for the safety of the end user, goods inciting or instructing third parties to violate any law or regulation, goods inciting hatred, violence, racism, pedophilia (including but not limited to child porn) or zoophilia or financially facilitating crime, goods that are considered obscene and goods infringing intellectual property rights of third parties. Additionally, the Client shall not use the service or the software for the distribution of spam or facilitating spam.
- 4.1.8 When the limitations referred to in article 4.1.7 of the General Terms and Conditions are exceeded or when in another manner the service or the software is improperly used, when TIE Kinetix on good grounds has doubts about the acts of the Client or when the Client does not pay the SaaS fees in time, TIE Kinetix has the right to suspend the user right, in whole or in part, for the duration of the exceeding, the violation, the improper use, the doubt and/or the failure of and to demand securities to prevent (further) exceeding, violation, improper use and/or failure. When the limitations referred to in article 4.1.7 of the General Terms and Conditions are exceeded, TIE Kinetix also has the right to terminate the SaaS agreement with immediate effect. The Client knows that violation of the user limitation(s) not only constitutes an attributable breach in the performance of the SaaS Agreement but may also constitute an infringement of TIE Kinetix's intellectual property rights. If so requested, the Client shall immediately fully cooperate with an inspection conducted by, or on behalf of, TIE Kinetix into the compliance with the agreed user limitations in these General Terms and Conditions and/or the SaaS Agreement.
- 4.1.9 The service or the software may contain Third Party Software. In this case, the Client will not be granted user rights to the Third Party Software under the SaaS Agreement. The relevant conditions of the third party shall apply to the use by the Client of Third Party Software. The Client implicitly accepts the relevant conditions by the use of the software. TIE Kinetix is in no event liable towards the Client or third party for any Third Party Software.
- 4.1.10 The responsibility for the data (including but not limited to personal data) for the performance of the agreement stored and/or processed on TIE Kinetix's server, rests exclusively with the Client. For purpose of the applicable Personal Data Protection Laws and/or other legislation in the areas of privacy and/or protection of personal data, TIE Kinetix will be considered to be the processor and the Client to be

the party responsible.

- 4.1.11 TIE Kinetix reserves the right to change the location of the server and change IP addresses.
- 4.1.12 The user right will be terminated if and on the moment the Client is granted a moratorium, if and on the moment a bankruptcy petition has been filed for the Client, if and on the moment the Client's company is dissolved or terminated, if and on the moment the Client is taken over by another legal entity, if and on the moment the Client merges with another legal entity, if and on the moment the Client's company is divided or if and on the moment the decisive control over the Client's company changes in another manner.
- 4.1.13 After termination of the SaaS Agreement, the Client cannot derive any rights from the SaaS Agreement, without prejudice to the continued existence of the obligations of TIE Kinetix and the Client which by their nature are meant to continue, for instance, but not limited to, the obligations on confidentiality and property rights (Reference is made to the articles 1.6 and 1.11 of the General Terms and Conditions). At the first request of the Client, TIE Kinetix will consult the Client about any necessary transfer activities to be performed by TIE Kinetix as the transfer and/or destruction of data, and the time span in which these activities should have to be performed with due observance of the provisions set out in article 2.3 of the General Terms and Conditions. If the Client has not made a request as referred to in this article within one month of the termination of the SaaS Agreement, TIE Kinetix has the right to destroy the data, links and any other material of the Client.
- 4.1.14 TIE Kinetix shall not be held to refund amounts received or to pay any damages on account of termination of the SaaS Agreement. Reference is made to article 1.3.7 of the General Terms and Conditions.
- 4.1.15 The provisions of article 1.11 of the General Terms and Conditions shall apply in full to the use of the software by the Client by means of a SaaS Agreement.
- 4.2 Guarantee on the service**
- 4.2.1 The service and the software are made available on an "as is" basis, therefore with all visible and invisible failures and defects and without any form of guarantee on the service or the software, either implicitly or explicitly. Therefore, TIE Kinetix does not provide any guarantees that the operation of the service or the software will be uninterrupted or free of failures or viruses, that the functions or performance of the service or the software will comply with the requirements of the Client or that the service or the software is suitable for a particular purpose or guarantees about the usefulness of the service or the software.
- 4.2.2 TIE Kinetix seeks to provide maximum availability of the service but does not guarantee that the service will always be available to the Client. Availability can be interrupted by various foreseeable and unforeseeable causes as failures, maintenance, system administration, security measures against network intrusions, installing updates and upgrades, changing the server location and external causes. If reasonably possible, TIE Kinetix will inform the Client about such activities and TIE Kinetix will resume the service as soon as possible. TIE Kinetix will not be liable for any damage arising from the interruption or unavailability of the service.
- 4.3 Maintenance**
- 4.3.1 TIE Kinetix provides maintenance of the software on the basis of a valid maintenance agreement. In case of a SaaS Agreement the maintenance (agreement) forms part of the agreement and the SaaS fees. In case of a license, maintenance is performed under a maintenance agreement. The maintenance agreement takes effect on the first day of the month following the month in which the software has been delivered.
- 4.3.2 The maintenance fees shall be paid annually in advance.
- 4.3.3 The maintenance agreement has an initial duration of thirty-six (36)

months, unless another duration has been included in the maintenance agreement. After the initial duration the maintenance agreement will be automatically renewed for consecutive periods of twelve (12) months, if the conditions set above have been met (Reference is made to article 1.3.2 of the General Terms and Conditions) unless the maintenance agreement concluded between TIE Kinetix and the Client on the basis of the agreement or pursuant to article 1.3.3 of these General Terms and Conditions, is terminated or has already been terminated, ended or cancelled.

4.3.4 TIE Kinetix's maintenance obligation consists of repairing defects in the software, in case of a license providing updates and/or in case of a SaaS Agreement providing updates and upgrades. Maintenance does not include repair of the consequences of replacement or re-installation of software or repair as a result of user mistakes or improper use. If during maintenance is found that work already carried out on the basis of the preceding sentence is not included in the maintenance, TIE Kinetix has the right to charge the Client the hours already spent in accordance with the present rates or to deduct the hours spent from a Consultancy or Support pre-paid bundle of hours. If the software has been changed by, or on the instructions of, the Client, if the software has been used contrary to the applicable conditions and/or instructions or through failure of the Client to install a specific update while this update fixes the failure, the maintenance obligation will be terminated and therefore TIE Kinetix will not have to carry out maintenance. Reference is made to article 1.5.5 of the General Terms and Conditions.

4.3.5 The Client shall report any detected failures in detail to TIE Kinetix. When a failure of the software has been reported, TIE Kinetix will assess the urgency of the failure before fixing it. TIE Kinetix has the right to install temporary fixes or circumvention devices or problem-avoiding limitations in the software.

4.3.6 All support activities will be performed on regular local working days, during regular working hours and under regular working conditions or otherwise specified in the agreement. Reference is made to article 4.6.2.

4.3.7 TIE Kinetix does not carry out maintenance on Third Party Software unless explicitly agreed in writing between TIE Kinetix and the Client.

4.3.8 The maintenance agreement will be terminated if and on the moment the Client is granted a moratorium, if and on the moment a bankruptcy petition has been filed for the Client, if and on the moment the Client's company is dissolved or terminated, if and on the moment the Client is taken over by another legal entity, if and on the moment the Client merges with another legal entity, if and on the moment the Client's company is divided or if and on the moment the decisive control over the Client's company changes in another manner.

4.3.9 After termination of the maintenance agreement, the Client cannot derive any rights from the license agreement and the maintenance agreement, without prejudice to the continued existence of the obligations of TIE Kinetix and the Client which by their nature are meant to continue, for instance, but not limited to, the obligations on confidentiality and property rights (Reference is made to the articles 1.6 and 1.11 of the General Terms and Conditions). Article 3.1.14 of the General Terms and Conditions on destruction or returning the software shall also apply.

4.3.10 TIE Kinetix shall not be held to refund amounts received or to pay any damages on account of termination of the maintenance agreement.

4.3.11 The provisions of article 1.11 of the General Terms and Conditions shall apply in full.

4.4 Delivery of updates and upgrades

4.4.1 Updates contain new releases aimed to support the continuity of the software in the long term.

4.4.2 If the maintenance includes more than an update as referred to in

article 4.4.1 of the General Terms and Conditions, this will be considered an upgrade. Upgrades are new versions that introduce one or more additional functionalities and /or increased performance. TIE Kinetix may require a new written agreement with the Client before making a new upgrade of a license available and TIE Kinetix may require a fee for making the upgrade available. In case of an upgrade TIE Kinetix may take over functionalities of the previous version of the software unmodified but TIE Kinetix does not guarantee that each upgrade contains the same functionalities as the previous version. TIE Kinetix has no obligation to maintain, change or add particular qualities or functionalities specifically for the Client.

4.4.3 TIE Kinetix has no obligation to actively keep the Client informed of new updates or upgrades.

4.4.4 If the Client refuses to install updates and/or upgrades TIE Kinetix has offered the Client, TIE Kinetix reserves the right to terminate the maintenance agreement or to adjust the maintenance agreement to this refusal.

4.5 Guarantee on maintenance

4.5.1 All maintenance activities to be performed by TIE Kinetix will be performed solely to the best of its knowledge and ability. Any maintenance activities will be performed on the basis of a best efforts obligation, therefore without any form of guarantee of the accuracy of the provided maintenance. TIE Kinetix therefore does not guarantee that the maintenance leads, or will lead, to the result desired by the Client. Furthermore, TIE Kinetix is not liable for any damage caused by delays in providing support (Reference is made to article 3.2.2 of the General Terms and Conditions).

4.5.2 The updates and upgrades are made available on an "as is" basis, therefore with all visible and invisible failures and defects and without any form of guarantee on the software, either implicitly or explicitly. TIE Kinetix therefore does not provide any guarantees that the update or upgrade will fix the reported problems and that the operation of the software will be uninterrupted or free of failures or viruses, that the functions or performance of the software will comply with the requirements of the Client or that the software is suitable for a particular purpose or provide any guarantees about the usefulness of the software. Furthermore, TIE Kinetix is not liable for any damage caused by delays in the delivery or providing of the updates and upgrades (Reference is made to article 3.2.2 of the General Terms and Conditions).

4.6 Support

4.6.1 TIE Kinetix provides support for the software if and as long as a valid maintenance agreement is in force. Unless a Service Level Statement has been issued or a Service Level Agreement has been concluded, the following standard support levels shall apply.

4.6.2 TIE Kinetix's support obligation consists of support for user questions and error messages via the help desk. TIE Kinetix shall deal with properly substantiated requests for support received by the help desk, within a reasonable period of time. In principle, the help desk can be accessed through the portal, by e-mail and by phone on regular local working days in the country where TIE Kinetix has its office (not on public holidays) between 8.30 a.m. and 5.30 p.m. CET. (In France between 8.30 a.m. and 6.00 p.m CET and in USA between 8.00 a.m and 6.00 p.m. CST). Any restrictions of accessibility will be communicated through the TIE Kinetix website, FLOW platform and/or other portal website. The Client may receive unlimited help from the help desk up to eight (8) hours per calendar year.

4.6.3 TIE Kinetix does not provide support for Third Party Software.

4.6.4 Support does not include repair of the consequences of replacement or reinstallation of software and other installation activities, repair as a result of user errors or improper use, support for communication with customers of the Client, implementation of corrections in messages, implementing adjustments to mappings and other mapping activities, mapping and implementation of new partners of the Client and performing adjustments to the configuration. If during

- maintenance is found that work already carried out on the basis of the preceding sentence is not included in the agreed support, TIE Kinetix has the right to charge the Client the hours already spent in accordance with the present rates or to deduct the hours spent from a Consultancy Strip Ticket or Support Strip Ticket already bought by the Client. Each support request or support call will be calculated in units of one (1) hour.
- 4.6.5 If the Client, during the performance of support activities, requests the performance of work not included in support with respect to the content or extent, TIE Kinetix is not under any obligation to fulfill such a request. TIE Kinetix may request that for the performance of such activities a separate agreement will be concluded.
- 4.6.6 The provisions of article 1.5.2, 1.5.3 and 1.5.5 of the General Terms and Conditions shall apply in full.
- 4.7 Guarantee of support**
- 4.7.1 All support activities to be performed by TIE Kinetix will be performed solely to the best of its knowledge and ability. Any support activities will be performed on the basis of a best efforts obligation, therefore without any form of guarantee of the accuracy of the provided support. TIE Kinetix therefore does not guarantee that the support leads, or will lead, to the result desired by the Client. Furthermore, TIE Kinetix is not liable for any damage caused by delays in providing support (Reference is made to article 3.2.2 of the General Terms and Conditions).
- 4.8 Training**
- 4.8.1 Training will be conducted at the offices of TIE Kinetix unless another location will be used.
- 4.8.2 When participating in a training, the full amount invoiced for the training shall be paid by the Client before the training has started. If payment for the training has not been received in time by TIE Kinetix, TIE Kinetix has the right to refuse the Client access to the training in question. In case of a "tailored training" the training will be provided on the basis of actual costs and the preceding stipulations from this article shall not apply (Reference is made to article 2.3 of the General Terms and Conditions).
- 4.8.3 If the Client is prevented from attending a training, the Client shall inform TIE Kinetix hereof a minimum of forty-eight (48) hours before the start of the training. If the Client has informed TIE Kinetix on time that a training will not be attended, there will be an option to register to attend the same training on another day, location or time to be agreed upon. Under no circumstance is the Client entitled to a refund of payments made for the training.
- 4.8.4 The Client is allowed to have a participant in a training replaced by another participant with prior written permission from TIE Kinetix.
- 4.8.5 If a minimum number of participants is required for a training, TIE Kinetix reserves the right to cancel a training if the minimum number is not met. In this case, TIE Kinetix will offer the Client the option to register for the same training on another day to be agreed upon. TIE Kinetix reserves the right, when required, to make changes in the organization and contents of a training. Under no circumstance is the Client entitled to a refund of payments made for cancellation of the training. TIE Kinetix shall not be liable for cancellation of a training.
- 4.8.6 TIE Kinetix expressly reserves all intellectual property rights to the documentation and the training, test and exam materials. The Client is not allowed to make public, exploit, sell, rent or multiply any data and/or parts from the provided documentation and/or training, test or exam materials. Article 1.11 of the General Terms and Conditions shall apply in this case.
- 4.9 Managed Services / Hosting Services**
- 4.9.1 TIE Kinetix will provide the hosting services agreed with the Client in the context of Managed Services. The available hosting services can be divided in shared hosting and private hosting.
- 4.9.2 If the agreement includes providing disk space on a server (shared hosting), the Client shall not exceed the agreed disk space. The Client shall only use the disk space for the agreed software and only within the purpose of the agreement.
- 4.9.3 The hosting fees shall be paid in advance every quarter.
- 4.9.4 A hosting agreement in the context of Managed Services has a duration of thirty-six (36) months. After the initial duration, the hosting agreement will be automatically renewed for a period of twelve (12) months, unless the hosting agreement concluded between TIE Kinetix and the Client on the basis of the agreement or under article 1.3.3 of these General Terms and Conditions is terminated or has already been terminated, ended or cancelled.
- 4.9.5 The responsibility for the data (including but not limited to personal data) for the performance of the agreement stored and/or processed on TIE Kinetix's server, rests exclusively with the Client. For purpose of the applicable Personal Data Protection Act and/or other legislation in the areas of privacy and/or protection of personal data, TIE Kinetix will be considered to be the processor and the Client to be the party responsible.
- 4.9.6 TIE Kinetix can make changes to the content or extent of the shared hosting as it sees fit. If such changes lead to a change of the current procedures of the Client, TIE Kinetix will inform the Client as timely as possible. TIE Kinetix reserves the right to change the location of the server and change IP addresses.
- 4.9.7 The hosting agreement will be terminated if and on the moment the Client is granted a moratorium, if and on the moment a bankruptcy up petition has been filed for the Client, if and on the moment the Client's company is wound up or terminated, if and on the moment the Client is taken over by another legal entity, if and on the moment the Client merges with another legal entity, if and on the moment the Client's company is divided or if and on the moment the decisive control of the Client's company changes in another manner.
- 4.9.8 After termination of the hosting Agreement, the Client cannot derive any rights from the hosting Agreement, without prejudice to the continued existence of the obligations of TIE Kinetix and the Client which by their nature are meant to continue, for instance, but not limited to, the obligations on confidentiality and property rights (Reference is made to the articles 1.6 and 1.11 of the General Terms and Conditions). At the first request of the Client, TIE Kinetix will consult the Client with respect to any necessary transfer activities to be performed by TIE Kinetix about the transfer and/or destruction of data, and the time span in which these activities should have to be performed with due observance of the provisions set out in article 2.3 of the General Terms and Conditions. If the Client has not made a request as referred to in this article, within one month of the termination of the hosting Agreement, TIE Kinetix has the right to destroy the data, links and any other material of the Client.
- 4.9.9 TIE Kinetix shall not be held to refund amounts received or to pay any damages on account of termination of the hosting Agreement.
- 4.9.10 The provisions of article 1.11 of the General Terms and Conditions shall apply in full to hosting.
- 4.10 Guarantee on hosting**
- 4.10.1 TIE Kinetix seeks to provide maximum availability of the hosted software but does not guarantee that the software or hosting will always be available to the Client. Availability can be interrupted by various foreseeable and unforeseeable causes as failures, maintenance, system administration, security measures against network intrusions, installing updates and upgrades, changing the server location and external causes. If reasonably possible, TIE Kinetix will inform the Client about such activities and TIE Kinetix will resume the service as soon as possible. TIE Kinetix shall not be liable for any damage arising from the interruption or unavailability of the hosted software or hosting services.
- 4.11 Consultancy**
- 4.11.1 Consultancy may consist of installation activities, mapping activities,

analytics, optimization, implementation and other activities to be executed by a TIE Kinetix consultant.

- 4.11.2 Consultancy is carried out on the basis of actual costs or on the basis of the estimated fee as described in the agreement. In case more hours are used than estimated, the additional hours will be charged by TIE Kinetix and paid by the Client, based upon the current rates. Article 2.3.1 of the General Terms and Conditions shall apply in both cases. Mapping activities will be carried out on the basis of actual costs with a minimum of two (2) hours per incident.
- 4.11.3 For Consultancy, when signing the agreement, TIE Kinetix reserves the right to charge 50% of the agreed activities. The remainder will be charged afterwards, provided that the duration of the project does not exceed one (1) month. For projects with a duration of more than one (1) month TIE Kinetix may charge the hours worked and costs incurred on a monthly basis (to a maximum of 90% of the agreed activities). When a bundle of pre-paid hours for Support or Consultancy has been bought, the full invoiced amount will be paid in advance. A bundle of pre-paid hours for Support or Consultancy has a duration of one (1) year. Additional work on the basis of actual costs will be charged unless otherwise agreed in writing with the Client. Other amounts related to Consultancy will be invoiced to the Client afterwards. Article 2.3 of the General Terms and Conditions shall apply in this case. When performing activities on location, article 2.1.2 of the General Terms and Conditions on travel and waiting time allowances, travel costs and/or kilometer (in USA mileage) allowances shall expressly apply.
- 4.11.4 The provisions of article 1.5.2, 1.5.3, 1.5.4, and 1.5.5 of the General Terms and Conditions shall apply in full.

4.12 Guarantee

- 4.12.1 All Consultancy activities to be performed by TIE Kinetix will be performed solely to the best of TIE Kinetix's knowledge and ability. All Consultancy activities will be performed on the basis of a best efforts obligation, therefore without any form of guarantee of the result of the activities. TIE Kinetix therefore does not guarantee that the activities lead, or will lead to the result desired by the Client. Furthermore, TIE Kinetix is not liable for any damage caused by delays in providing Consultancy (Reference is made to article 3.2.2 of the General Terms and Conditions).