Infratech

Infratech Telecommunicatie B.V. - General Conditions of Service

Clause 1 - General

1.1 These conditions form part of, and apply to, all quotations made by Infratech Telecommunicatie B.V. (hereinafter: Infratech), all assignments given to Infratech, and all agreements to which Infratech is a party, unless expressly agreed otherwise in writing by Infratech.

1.2 By giving an assignment or by entering into an agreement with Infratech, the client/contracting party (hereinafter to be referred to as: the client) accepts these conditions. Any additions to, and derogations from, these conditions may only be agreed on in writing. Any provision to the contrary in the client's general conditions of purchase or sale or any change or changes in the order confirmation made by the client will not form part of the agreement formed between Infratech and the client.

1.3 All agreements with the client will be accompanied by a copy of the applicable conditions, which will form an integral part of the agreement. Subsequently, a free copy of the applicable conditions will be sent to the client on request.

1.4 Infratech will be entitled to assign all or part of its obligations under this agreement to any third party.

1.5 These general conditions and all agreements of which they form part will be governed by Dutch law, and the District Court in Alkmaar (the Netherlands) will, to the exclusion of others, have jurisdiction to take cognisance of all disputes regarding agreements of which these conditions form part.

Clause 2 - Definitions

2.1 System: The entirety of all Hardware and Software referred to in the "Product Specification" of the Service Agreement.

2.2 Product Specification: The list of all Hardware and Software forming part of the Service Agreement, to which the conditions of the Service Agreement are applicable.

2.3 Service Agreement: Agreement for a definite period of time to which, in addition to these General Conditions, agreement-specific conditions apply (or may apply).

Clause 3 - Quotations and Prices

3.1 All quotations issued by Infratech will remain valid for a period of 30 days after the date thereof.

3.2 Unless indicated otherwise, stated prices will be in euros and exclusive of VAT.

3.3 Agreed prices for Service Agreements will remain valid for a period of 12 months, to be calculated from the effective date of the Service Agreement. From the end of this period, Infratech may unilaterally change the prices, provided that Infratech has notified the client of such change in writing 60 days before the effective date thereof. The client will then be entitled to terminate the Service Agreement in writing with effect from the effective date of the new prices, with due observance of a notice period of 30 days.

3.4 Infratech will perform, or provide, the services not included in any quotation or Service Agreement in accordance with Infratech's customary rates and price lists.

3.5 During the warranty period, Infratech may, for purposes of a Service Agreement, grant the client a warranty discount. Such warranty discount will apply to the Hardware only, and will not be settled on a proportionate basis until after and to the extent that the client has assigned the warranty rights to Infratech by means of submission of the documents required to that end (warranty cards and/or copy delivery notes stating serial numbers and delivery dates and on the basis of which Infratech can enforce the warranty rights vis-à-vis the supplier). If the client has not assigned the warranty rights to Infratech within two weeks of the effective date of the Service Agreement, Infratech will be entitled to charge the rate to the client in accordance with its price list. In no event may the warranty rights assigned to Infratech exceed the original warranty rights as granted by the supplier.

3.6 If a quotation is based on information provided by the client (product specification) and if, afterwards when making an inventory, Infratech identifies derogating quantities or Hardware and/or Software not stated in the product specification, and if the client indicates that it wishes to include these in the Service Agreement, the price in the Service Agreement will be adjusted in accordance with the information established when making the inventory.

Clause 4 - Formation of the Agreement

4.1 If Infratech's Service Agreement is accepted, the agreement will not be formed until:
- the client has signed, and Infratech has received, the agreement with the associated "Product Specification".

4.2 Infratech cannot be required to commence provision of the service until it has received all the information required to that end as well as the agreed (contractual) payment.

Clause 5 - Payments

5.1 Service Agreements will be invoiced every 12 months in advance.

5.2 Unless agreed otherwise in writing, the client will be required to pay the invoice amount within thirty days of the date of the invoice. A payment will not be deemed to have been made until the amount has been received by Infratech without discount or compensation. Payments are to be made in the manner as indicated by Infratech on the invoice. Or, if agreed, by means of direct debit.

5.3 Without Infratech's written consent, set-off or application of any form of discount by the client will not be permitted.

5.4 If the client fails to pay within the period stated in subclause 5.2, the client will, without prior notice being required, be required to pay statutory interest with effect from the due date. This interest will be increased by 2% per month, part of a month being regarded as a full month.

5.5 If the client fails to perform its payment obligations vis-à-vis Infratech and the client fails to comply with its payments obligation within thirty days of receipt of a notice of default sent by Infratech, the client will be in default and Infratech will be authorised, without prejudice to any other rights vesting in it, to suspend delivery of the Hardware/Software and/or provision of the services purchased by the client from Infratech for the duration of the default, or to provide them on the basis of cash on delivery, against cash payment or against proper security only.

5.6 The judicial and extrajudicial costs to be incurred by Infratech in order to collect its claim(s) against the client or to enforce any other right under any Service Agreement will be fully borne by the client.

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5.7   If the client fails to perform its payment obligations in good time, Infratech will be entitled to repossess the Hardware and/or Software made available with respect to which Infratech has retained title, without Infratech being liable to pay any damages.

Clause 6 - Service Provisions

6.1   The system to which the conditions of the Service Agreement apply will be specified in the product specification of the Service Agreement, stating for each individual product what type of service will apply. The conditions that are applicable to the relevant type(s) of service will be included in the Service Agreement as additional conditions.

6.2   Infratech reserves the right to carry out an inspection before including Hardware and/or Software in the product specification of an agreement.

6.3   If it has been agreed that Infratech will be responsible for repairs of the System, Infratech will, at the client's request and with due observance of the conditions attached to the applicable type(s) of service, remedy any malfunctions occurring. In such event, Infratech will, if so required, replace any component parts that are worn or damaged as a result of normal use at the client's expense, in such a manner that, according to the specifications and/or documentation of the System as provided by the supplier, the operation of the System is guaranteed to the extent possible. Any component parts that will be replaced will become the property of Infratech.

6.4   The following activities will not be included in the General Service Provisions, but will be carried out on conditions to be agreed in further detail:
   *   technical changes in the event of expansion or reduction of the System;
   *   connecting, disconnecting and relocating the Hardware/System;
   *   on request, testing, replacing or adjusting component parts/Hardware not supplied by Infratech.

6.5   If it has been agreed that, in addition to restoring the functionality of the individual Hardware and/or Software, Infratech will also be responsible for the operation of Hardware and/or Software in their mutual coherence (for example a network), this must be stated separately in the Service Agreement (Network Support / Server Support).

6.6   Infratech's obligations will not include the replacing of information carriers and consumables, including, but not limited to, printer heads of matrix printers, ribbons, toners, drums, developers, fuser kits, pacs, batteries, battery packs for notebooks, voltage stabilisers, adapters, with the exception of, and if specified, hard disks connected to the System. Infratech's obligations will not include the replacing of component parts of the System that are subject to wear and tear from normal use, such as monitors, LCD displays including, but not limited to, image persistence of the screen and the reduction of the intensity.

6.7   Infratech will make every effort, but will not be obliged, to remedy any malfunctions due to:
   -   external causes impacting the System (including causes in Hardware and/or Software the maintenance of which has not been assigned to Infratech);
   -   repairs or work performed by the client, its staff or any third parties;
   -   adjustments to applications/system software by the client, its staff or any third parties;
   -   inexpert use by the client;
   -   wear and tear from normal use by the client.
   Infratech may, however, charge any related costs to the client in addition to the price for the Service Agreement.

6.8   The client will be required:
   -   to use the information carriers and consumables approved by the supplier of the System;
   -   to ensure that the room where the System (or component parts thereof) are located conforms to the specifications and conditions for the System as supplied by the supplier and/or Infratech;
   -   to ensure that the transportation of the System to another location will be handled by, or in close consultation with, Infratech;
   -   to inform Infratech about any changes in the location data in good time;
   -   to report any occurring malfunctions and deficiencies in the System to Infratech without delay;
   -   to grant Infratech, its staff and any third parties acting on its instructions unrestricted access to the System for carrying out service work, if necessary to make appropriate storage and working areas available, and ensure the presence of at least one qualified employee of the client;
   -   without Infratech's prior written consent, not to make any connection with Hardware/Software not maintained by Infratech in any way whatsoever, with the exception of modem connections with communication networks, which comply with the relevant applicable statutory regulations.

6.9   The client warrants that, at the time of entering into the Service Agreement, the System conforms to the supplier's specifications, is in good condition and is not subject to major overdue maintenance. If this turns out not to be the case, and repair work is to be carried out within the contract term of the Service Agreement, Infratech will be entitled to charge any ensuing costs of repair to the client.

6.10   The service work will be carried out during the working hours agreed in the Service Agreement. If Infratech carries out service work outside the agreed working hours at the client's request, the client will be liable to pay Infratech the surcharges customary at Infratech's.

6.11   Unless expressly agreed otherwise, Service Agreements will be entered into for a period of at least 1 year, to be calculated from the effective date of the Service Agreement, and will be renewed for subsequent terms of 1 year each, save termination by registered letter. Either party may terminate Service Agreements with effect from the end of the current service period, subject to a notice period of at least 3 months.

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Clause 7 - Warranty on Work Carried out on the Basis of Subsequent Calculation

7.1 Infratech warrants integrity of the repair work carried out by it and any component parts supplied for purposes thereof for a period of 3 months, to be calculated from completion of the repair work, on condition that the client reports any defects immediately after discovery thereof, after submission of the service report and/or invoice. The client will allow Infratech time to remedy the defect. In such event, Infratech will remedy the identified defects and, if necessary, replace the defective component parts. Any component parts that will be replaced will become the property of Infratech.

7.2 Any entitlement to warranty will lapse in the event of:
   a. inexpert or incorrect use of Hardware/Software, including, but not limited to, use of Hardware/Software contrary to the instructions in the documentation;
   b. objectively, incorrect or faulty connection of Hardware/Software by parties other than Infratech;
   c. changes made by the client or by third parties without Infratech's express consent in writing;
   d. defects in or damage to Hardware/Software caused by, or relating to, lightning or other external influences impacting the Hardware/Software.

7.3 Save the provisions in these General Conditions, Infratech will not be required to give any guarantee, howsoever named.

Clause 8 - Delivery and Retention of Title

8.1 Delivery will take place at the location communicated by the client. From the moment of delivery, the Hardware/Software will be at the client's risk.

8.2 Title to the Hardware/Software supplied by Infratech will not pass to the client until after payment in full.

8.3 If and to the extent, as a result of a statutory regulation, the effect of this clause is restricted to the detriment of Infratech, the client will undertake, on Infratech's demand, to create a non-possessory pledge for the benefit of Infratech in respect of all Hardware/Software supplied to the client, as security for any existing and future claims against the client.

Clause 9 - Acceptance and Complaints

9.1 Hardware/Software installed by Infratech will be deemed to have been accepted by the client as soon as the diagnostic Software has been successfully completed, or as soon as a functional inspection has shown that the Hardware/Software operates in accordance with the specification.

9.2 The client will be required to lend its cooperation to the diagnosis or functional inspection.

9.3 The client will be required to inspect Hardware/Software not installed by Infratech immediately upon delivery thereof by Infratech.

9.4 The client will be deemed to have accepted the Hardware/Software, and any right of complaint will lapse, if it has not lodged a complaint with Infratech within 8 days of delivery, accurately stating the defects identified, and having allowed Infratech to inspect the Hardware/Software.

Clause 10 - Software

10.1 In no event will the client be entitled to claim that Infratech make title to, or the copyright in, Software available to it.

10.2 Infratech will only transfer the use right to the Software to the client on the following conditions:
   1. The Software, in its entirety or any part thereof, may be used only on a single central processor unit (CPU) for which such Software is intended and on which it was first installed, and may only be copied – subject to addition of the copyright notice and any proprietary notices of the copyright owner – for use on such CPU. Only if and for as long as such CPU is defective to such an extent that the Software cannot be used on it, may the Software or any copies made thereof be temporarily used on another CPU.
   2. The client will not be entitled to make the Software or any part thereof, or copies of all or part of the Software, available to any third parties in any way whatsoever. The client will only be able to make the Software available to its staff members and to persons whose services it uses with respect to the Software if it expressly stipulates, also for the benefit of Infratech, that they only use it for the benefit of the client, not make any copies thereof and return the Software to the client after use.

10.3 The client will be required to return any Software made available to it by Infratech, including any copies made thereof or – if so requested by Infratech – destroy same in the presence of Infratech.

Clause 11 - Intellectual Property

11.1 If the client is held liable, in court or otherwise, based on the allegation that it infringes copyrights, patent rights and/or trademark rights by using Hardware/Software supplied by Infratech, the client will notify Infratech thereof in writing without delay and allow Infratech, at Infratech's expense, but if necessary in the name of the client, to conduct a defence against such claim, and provide Infratech with all required powers of attorney, information and assistance in that respect.

11.2 On the express condition that the client has performed the above obligation and has left the conduct of the defence and all settlement negotiations to Infratech, Infratech will undertake to pay the compensation awarded by the court to the copyright owner or agreed with the copyright owner. Furthermore, if the client is ordered by the court to cease the use of Hardware/Software supplied by Infratech on account of infringement, Infratech will, at Infratech's expense, procure the required licences for the benefit of the client to continue the use of the Hardware/Software, or replace or modify same to such an extent that the challenged infringement will cease to exist or, if the above cannot reasonably be achieved, repossess/cease the use of the Hardware/Software or parts thereof causing the infringement, granting the client a credit equal to the value of the Hardware/Software, taking into account the reduction in value to be calculated according to generally applicable principles.

11.3 In derogation from the above, Infratech will in no way whatsoever be liable vis-à-vis the client for the consequences of infringement of any of the rights referred to above, that relate to the use of Hardware/Software supplied by Infratech in combination with Hardware/Software not supplied by Infratech, with information provided to Infratech by the client, or with service actions and/or applications performed by Infratech on the client's instructions. The client will be under an obligation to indemnify Infratech against all and any third-party claims in that respect.

11.4 Save the above, Infratech will in no way whatsoever be liable to compensate damage ensuing from any infringement of the rights referred to above.

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Clause 12 - Liability
12.1   Infratech will only assume liability for material damage inflicted on persons and items (to the exclusion of Software and data files) that is directly related to Hardware/Software supplied by it if and to the extent that the corporate liability insurance taken out by Infratech covers claims in respect of such damage. Otherwise, Infratech will not assume any liability for damage or loss, of any nature whatsoever, that is directly or indirectly related to Hardware/Software and/or services provided by Infratech, unless in the event of intent of gross negligence on the part of Infratech and/or individuals. Copy of the insurance policy will be handed to the client on demand.
12.2   In no event will the parties be liable vis-à-vis each other for any form of damage, including loss due to delay, indirect damage, arisen, *inter alia*, as a result of or relating to the loss of data, time or customers, for lost profits, for indirect damage arisen as a result of the non-performance or inadequate performance of Hardware/Software, or for any other consequential damage.
12.3   The legal claim for compensation or for repair by the client vis-à-vis Infratech under these conditions will prescribe by the lapse of one year after the client having protested the matter.

Clause 13 - Force Majeure
13.1   If, due to force majeure (including a pandemic), Infratech is prevented from performing all or part of a Service Agreement, it will be entitled, without judicial intervention being required, to suspend performance of the Service Agreement or to dissolve all or part of the Service Agreement, all at its own discretion, without being liable to pay any damages or provide any warranty. Force majeure will include all circumstances constituting force majeure situations according to Dutch Law.

Clause 14 - Ban on Taking Over Staff
14.1   Without Infratech's prior written consent, the client may not, during the assignment and during a period of two years following termination:
-    employ or solicit the employ of Infratech employees, have them work for it, directly or indirectly, in any other way, or induce Infratech employees to terminate their employment;
-    induce customers and/or third parties such as subcontractors and other agents of Infratech's to terminate or drastically change their relationship with Infratech.

In the event of violation of this ban the client will forfeit vis-à-vis Infratech an immediately due and payable penalty of € 50.000,- per violation, as well as a penalty of € 5.000,- per day or part of a day that the violation continues, without prejudice to client's right to claim compensation of the damage actually suffered.

Clause 15 - Final Provision
15.1   The agreement and all agreements ensuing from it will be exclusively governed by Dutch law.
15.2   All disputes will be submitted to the competent court in the place or district where Infratech has registered office.

Clause 16 - CBS Material and Wage Settlement
16.1   Rates may only be changed once a year on 1 January of that year. In the event of rate changes, the percentage of the increase may not exceed that change percentage in the preceding twelve (12) months of the price index figure for the metal and electrical sector, as published by Statistics Netherlands (CBS).

Clause 17 - Source and Amendment to Conditions
17.1   These conditions have been filed with the Chamber of Commerce in Alkmaar under number D241.
17.2   The version filed most recently or the version as applicable at the time of formation of the legal relationship with the client will at all times be applicable.
17.3   The Dutch text of the general conditions will at all times be decisive for interpretation thereof.

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