



# Delivery Terms and Conditions F1 Solutions B.V.

## General

The general provisions of Articles 1 through 11 are applicable to all offers and agreements of *F1 Solutions B.V.* Mussenstraat 49 1223 RB Hilversum ("the Supplier").

## 1 Offer and Agreement

1. These General Terms and Conditions are applicable to all offers and agreements subject to which the Supplier agrees to supply goods and/or services, of any nature, to the Client, also where these goods or services are not (further) described in these Conditions, unless the parties have expressly agreed otherwise in writing. The purchase conditions or other terms and conditions of the Client, if any, do not apply unless expressly accepted by the Supplier in writing.  
Deviating agreements, any additional agreements or changes that are subsequently made or any (oral) agreements reached with and/or commitments made by employees, representatives or agents are binding on the Supplier if confirmed in writing by the Supplier only.
2. All offers on the part of the Supplier are subject to contract, unless stated otherwise by the Supplier in writing.
3. Failure by the Supplier to demand strict compliance with these Conditions does not imply that these Conditions do not apply or that the Supplier foregoes the right to demand strict compliance with these Conditions in the future, in the same or different circumstances, as yet.
4. Would any provision of these General Terms and Conditions be null and void or declared invalid, then the remaining provisions of these General Terms and Conditions remain fully in effect and the Supplier and the Client will consult one another so as to agree on new provisions to replace the null or invalidated provisions and in so doing the object and meaning of the null or invalidated provision shall be observed.

## 2 Price and Payment

1. All prices are exclusive of turnover tax (VAT) and other government levies.
2. All offers and quotations are subject to contract and are based on the information supplied with the request for quotation. The Client vouches for the correctness and completeness of the particulars provided by him on which the Supplier based his offer or quotation.
3. The Supplier cannot be held to offers or quotations if according to the criteria of reasonableness and fairness and generally accepted views the Client ought to have understood that the offer, quotation or any part thereof contains an evident error or phenomenon.
4. All quoted prices are based on the prices, rates, wages, taxes, levies, charges, freight costs, etc. as they apply at the time of the offer. If a change occurs in any of the above-mentioned cost price factors after the order has been confirmed, the Supplier may revise the agreed price accordingly.
5. All invoices are payable by the Client subject to the payment terms stated in the invoice. All invoices are payable within 30 days after the invoice date unless specific payment terms apply. All payments are due without set-off or suspension, for any reason, unless it is decided by arbitration award or court ruling that the Client has an offset or ground for suspension.
6. If the Client fails to pay an amount due within the agreed term, the Client shall owe interest on the outstanding amount at 1.5% per month, without further notice of default.  
If, after having been held in default, the Client still fails to pay the amount due, the debt may be turned over for collection, in which event the Client will owe the full legal and extrajudicial collection costs, including lawyer's fees, in addition to the amount due, which are set at a minimum of 15% of the total amount due.



7. Where the Client's creditworthiness gives reason to do so, the Supplier may demand additional security, absent which the performance of the agreement may be suspended.
8. In the event of a price increase due to any of the factors mentioned above, the Client may terminate the agreement, provided it does so by registered letter within three days after having been informed of the price increase.
9. Submitted complaints about the invoiced amount do not exempt the Client from his obligation to pay.

### 3 Confidential information and take-over of staff

1. Each of the parties warrants that all information received from the other party is, in principle, confidential in nature and will be treated as such and will be kept secret, save where a statutory obligation exists to disclose the information provided. The receiving party may only use the confidential information for the purpose for which it is provided. The information will in any event be assumed to be of a confidential nature if one of the party marks the information as such and will be kept confidential for a period of two years after termination of the underlying agreement, unless the parties agree otherwise in writing.
2. The Client is not allowed, without the other Supplier's prior written permission, to hire any employees or former employees of the Supplier during the term of the agreement and for a period of twelve months after its termination or to let them work and/or perform activities beyond employment for the benefit of the Client, or intercompanies that cooperate with the Client, all this in the broadest sense.
3. Each violation of any of the provisions of Articles 3.1 and 3.2 of these Conditions results in the violating party owing the other party an amount of €10,000 as well as an amount of €5,000 for each day that the violation continues, with a maximum of €100,000 and without prejudice to the right of the other party to fully recover the damage it has suffered due to the violation of the provisions of the aforementioned Articles by the violating party.

### 4 Retention of title and right of lien

1. All goods delivered and to be delivered will remain the exclusive property of the Supplier until all claims the Supplier has or acquires against the Client, under any title, are fully paid. The claims referred to in this Article concern but are not limited to:
  - A considerations under a purchase agreement or any other agreement of any nature, for goods delivered or to be delivered by the Supplier or for tasks performed or to be performed under such agreement for the benefit of the purchaser, and
  - B claims due to failure to perform the agreements referred to in A, above, including claims for damages and compensation of extrajudicial, contractual and statutory interests, fines and penalty payments.
2. For as long as title to the goods has not passed to the Client, it may not pledge these goods or grant third parties any other rights thereto, save in the normal course of business. The Client agrees to cooperate, at the Supplier's first request, with the creation of a right of pledge on the claims the Client obtains or will obtain against its customers in connection with supplying these goods to them.
3. The Client undertakes to keep the goods that are delivered subject to retention of title with all due care and as the recognisable property of the Supplier.
4. The Supplier will be entitled to repossess goods that are delivered subject to retention of title and that are still in the Client's possession if the Client fails to fulfil its payment obligations or is or threatens to be in financial difficulties. The Client agrees to allow the Supplier unrestricted access to its premises at all times in order to inspect the goods and/or to exercise the Supplier's rights.
5. The retention of title referred to herein will also extend to any new goods that are produced using the aforementioned goods.
6. The provisions mentioned under 4.1 through 4.5 will not prejudice any other rights the Supplier may have.



7. The Supplier is entitled within the framework of the agreement to retain goods received or generated and this in spite of a duty to hand over and this until such time that the Client shall have settled all amounts due to the Supplier.

## 5 Intellectual/industrial Rights of the Supplier and of the Client

1. The copyright and any other intellectual or industrial property rights to all Software, equipment or other materials (including analyses, designs, documentation, reports, quotations, etc.) supplied or made available to the Client in any way by the Supplier will exclusively rest with the Supplier or its licensors; the Client will only obtain the rights of use that are expressly awarded by virtue of these Conditions, unless the Supplier and the Client expressly agree otherwise in a written and signed document. The rights of use are not transferable to third parties.
2. The Client is aware that the supplied Software and other materials contain confidential and proprietary information of the Supplier and agrees to keep the Software and materials secret and not to disclose same to any third party or allow third parties the use of them.
3. The Client may not remove or alter any references to copyrights, trade marks, trade names or other intellectual or industrial property rights from the Software, equipment or materials, including any references to the confidential nature of the Software and that is must be kept secret.
4. The Supplier may take all necessary technological measures to protect the Software. The Client may not remove or alter such a technological measure.
5. The Supplier agrees to indemnify the Client against any claims that the Software developed by the Supplier infringes any copyright in the Netherlands. The Supplier agrees to pay all costs and damages it is ordered to pay by final and irrevocable judgment, provided it has been immediately notified in writing by the Client and the Client agrees to let the Supplier exclusively conduct the case and fully cooperates with the Supplier, including any powers of attorney and information. The obligation of indemnification is no longer valid if the reproached infringement is connected with materials provided to the Supplier by the Client or modifications the Client made or let make in Software, equipment or other materials. The provisions of Article 9 are fully applicable. If legal action is brought or is threatened, the Supplier may replace the Software or alter it in any way the Supplier sees fit.
6. The customer agrees not to lease the Software or give it on loan to others, or to copy, modify or reproduce the Software. The customer agrees to impose a similar obligation on its intermediaries and employees.

## 6 Cooperation from the Client

1. The Client agrees to provide the Supplier in time with all useful and necessary data or information and to be ready to cooperate at all times.
2. The Client is responsible for the use and correct application of the equipment, Software and services to be provided by the Supplier within its organisation and for applying the correct administrative and calculation methods and for securing the data.
3. Where the parties agree that the Client will make equipment, materials or data available, these shall meet the specifications that are necessary for a proper execution of the work.
4. If the data necessary for the proper performance of the agreement are not made available to the Supplier, or not timely, or not in accordance with what was agreed or if the Client fails in any other way to fulfil its obligations, the Supplier may suspend the performance of the agreement and to charge the extra costs to the Client on the basis of the Supplier's normal rates.
5. The Supplier may trust that the data it receives from the Client in respect of the order is correct, both as regards form and as regards content.
6. If during the performance under the agreement use is being made of telecommunication, including the internet, the Client is liable to make this available. The Supplier is never liable for disturbances or for this telecommunication not being available. The Supplier is able and will be entitled to record telephone conversations in order to guarantee the quality level of the services provided.



## 7 Delivery periods

All (delivery) periods specified by the Supplier are determined to the best of its knowledge and based on the information available to the Supplier when concluding the agreement and will be observed to the best of its abilities. The Supplier will not be bound to (delivery) periods that can no longer be met due to circumstances that have occurred after the agreement was concluded. The Supplier will not be in default by the single exceeding of a mentioned delivery period. Exceeding of a mentioned delivery period does not entitle the Client to damages or postponement of any obligation resulting from the agreement. If the Supplier threatens to be unable to meet any delivery period, the Supplier and the Client will consult on the matter as quickly as possible. Any excessive exceeding of a period may be regarded as a terminating event, subject to the provisions of Articles 8 and 9.

## 8 Termination

1. Unless parties agreed otherwise the agreement may only be terminated by giving notice and only if the other party, after having been held properly in default in writing including a reasonable term to repair the shortcoming, is in breach of a material contractual obligation. Notice must be given by registered letter sent to the other party; no court intervention will be required.
2. If any part of the agreement has already been performed at the time when notice is given, the Client may only terminate the agreement in part, i.e. only in respect of that part that the Supplier has not yet performed.  
Any amounts the Supplier has billed in connection with what has already been performed or provided in execution of the agreement prior to giving notice will be fully due and will become immediately payable at the time of termination.
3. In departure from Article 8.1, the Supplier may terminate the agreement, either wholly or in part, with immediate effect and without court intervention, by giving the Client written notice in the event the Client is declared insolvent, is granted a moratorium (provisionally or otherwise), is unable to meet its payment obligations for any other reasons, or if its enterprise is liquidated or ceases operations, unless as part of the reorganisation or merger.  
The Supplier will in no event be liable to pay any compensation in connection with such termination.

## 9 Suppliers' liability; indemnification

1. The Supplier accepts the statutory obligations to pay compensation in so far as this appears from this Article 9.
2. In the event of a breach of contract, the Supplier will only be liable to pay alternative compensation, i.e. compensation of the value of the non-performance. Any liability on the part of the Supplier for any other form of damage is excluded, including additional compensation of any nature, compensation for indirect or consequential loss, or for loss of profit. The Supplier will furthermore not be liable for any loss due to delays or loss of data due to delivery periods being exceeded as a result of altered circumstances, loss due to having received insufficient cooperation, information or materials from the Client, and loss due to information or advice provided by the Supplier the content of which does not expressly form part of a written agreement.



3. The compensation owed by the Supplier in connection with any breach of contract shall in no event exceed 50% (fifty percent) of the amounts the Client is or will be billed by the Supplier under the agreement concerned, exclusive of turnover tax.

If and in so far as the agreement is a continuing performance agreement, the compensation due for breach of contract will in no event exceed the fee (exclusive of turnover tax) stipulated in the agreement concerned for performance due by the Supplier in the three-month period immediately preceding the breach.

Any credits stipulated by the Client and granted by the Supplier will be deducted from the amounts and fees referred to in this Article 9.3.

4. In the event of an unlawful act on the part of the Supplier, its employees or subordinates for which the Supplier may be held directly liable, the Supplier will only be liable for compensating the damage by death or personal injury or any other damage in so far as the latter is intentionally caused or due to gross negligence. In each of these instances the compensation shall in no event exceed the amount of €1,134,451 (one million one hundred and thirty-four thousand four hundred and fifty-one euros) per incident, with a series of connected incidents counting as one incident.
5. Any liability on the part of the Supplier for loss caused by an unlawful act other than referred to in Article 9.4 is expressly excluded. If and in so far as that Article may not be invoked, the loss per incident, with a series of connected incidents counting as one agreement between the parties in respect of which the event has occurred or in the absence of which, the agreement in force between the parties at the time when the damage occurs, but the liability of the Supplier will in no event (and therefore also in the event that a series of incidents does not count as one incident) exceed EUR 1,134,451 (one million one hundred and thirty-four thousand four hundred and fifty-one euros).
6. The following (*inter alia*) shall not be for the risk of the Supplier:
  - damage caused by loss of any data stored on magnetic, optical and/or other information carriers.
  - damage caused by the use of communication equipment connected to the telephone network, including loss of data, theft of data, incorrect transmission of data, damage to data or to other files, or the incorrect functioning of lines of communication.
7. The Client agrees to indemnify the Supplier against any and all loss or damage the Supplier may suffer due to third-party claims in connection with goods or services provided by the Supplier, including:
  - claims from third parties, including the Client's employees, who suffer damage as the result of the unlawful act of employees of the Supplier that are seconded to the Client and that work under its supervisions or instructions;
  - claims from third parties, including the Client's employees, who in connection with the performance of the agreement suffer damage as a result of the acts or omissions of the Client or of unsafe conditions in its enterprise;
  - claims from third parties who incur damage as a result of a defect in products or services provided by the Supplier and that are used, modified or passed on by the Client after adding or in combination with its own products, software or services, unless the Client demonstrates that the defect is not caused by the use, modification or passing on as referred to above.
8. The Supplier is never liable for damages resulting from the Client not meeting a (Solutions) license agreement.
9. It is a condition for a claim to damages to arise that as soon as this occurs the Client notifies the Supplier and has duly service notice on the Supplier allowing a reasonable time for the Supplier to repair the shortcoming. Any right to compensation is conditional to the Client notifying the Supplier in writing of any damage or loss as soon as reasonably possible after it has occurred.



## 10 Force majeure

1. Neither of the parties will be obliged to fulfil any obligations if it is prevented from doing so due to a circumstance beyond its control and that is not for its account by law, legal act or according to common opinion.
2. Force majeure shall in any event include delays at or breach on the part of subcontractors on the Supplier; the impossibility to supply as a result of a government order or statutory provision; the impossibility to supply due to the negligence or intent on the part of people employed by the Supplier or people whose services the Supplier directly engages; war and war risk, irrespective of whether the Netherlands is directly or indirectly involved; fire or other destructions at the Supplier's; full or partial strikes of the transport system; and defects to machinery and/or instruments or other disruptions at the Supplier's or in the enterprise of our subcontractors; all external causes, both foreseeable and unforeseeable, over which the Supplier has no control, but as a result of which the Supplier is unable to fulfil its obligations.
3. In the event of force majeure - even if such event could be foreseen at the time of concluding the agreement or awarding the order, as a result of which the Supplier is temporarily unable to perform the agreement or execute the order, the Supplier may, without court intervention, either suspend the performance of the agreement or the execution of the order for the duration of the impediment, or terminate the agreement, without owing any compensation or fine in that event.
4. If and in so far as the Supplier is unable to fulfil its obligations due to an event of force majeure, the customer will not be required to pay the corresponding parts of the agreed price.
5. If the force majeure event has lasted 90 days or if it is certain that it may last more than 90 days, either party will be entitled to terminate the agreement prematurely without observing any notice period, on the understanding that such premature termination is no longer possible if the obligation the performance of which was temporarily impeded due to an event of force majeure has been fulfilled as yet. In the event of premature termination due to a force majeure event the Client is obliged to pay those parts of the agreed price that are payable in instalments or in advance in respect of the period prior to the force majeure event as yet.
6. The Supplier may also invoke a force majeure event where such event preventing the (further) performance starts after the Supplier ought to have fulfilled its obligation.
7. The Supplier will notify the Client of a (threatened) force majeure event as quickly as possible.
8. In the event of force majeure the Client is not entitled to any compensation or damages, including if the Supplier enjoys any benefit as a result of the force majeure.

## 11 Governing law; disputes

1. All agreements concluded between the Supplier and the Client are governed by and will be interpreted in accordance with Netherlands law.
2. Any disputes that arise between the Supplier and the Client further to the agreement concluded between them or further to additional agreements arising from that agreement will be settled in accordance with the Arbitration Rules of the foundation *Stichting Geschillenoplossing Automatisering* in The Hague. In addition, the ICT mediation Rules of this foundation apply.