



Nederlandse Vereniging van Ziekenhuizen



## General Purchase Conditions in Healthcare (GPC)

### Information and Communications Technology Module (ICT)

General Purchase Conditions for Nederlandse Vereniging van Ziekenhuizen (NVZ), Vereniging Gehandicaptenzorg Nederland (VGN), ActiZ, organisatie van zorgondernemers, GGZ Nederland, Nederlandse Vereniging voor Inkoopmanagement (NEVI), Intrakoop, InkoopAlliantie Ziekenhuizen (IAZ) and Santeon. These general purchase conditions may be extended to agreements yet to be concluded between institutions and suppliers that are part of the aforementioned trade associations. These "General Purchase Conditions in Healthcare" were filed by the above parties at the District Court in The Hague on 21 February 2017 under file number 16/2017.

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#### **Article 1 Additional ICT definitions**

**Hardware:** the hardware that based on the Agreement is to be delivered and/or deployed including the most recent Software and additional facilities, accessories and accompanying Documentation.

**Acceptance:** the approval of Hardware parts delivered by Supplier and/or the results of delivered Services.

**Acceptance test:** the test determining if Hardware delivered by Supplier and/or the results of delivered Services are in accordance with agreed Specifications.

**Documentation:** system and user manuals that are part of the Hardware and/or Software containing structure, composition and configuration, and project documentation, which also includes Specifications.

**Implementation:** the configuration, adjusting and preparing of Hardware and/or Software for its intended use and announcing the user with functionality.

**Installation:** connecting the Hardware and/or Software.

**Custom software:** Software specifically designed for Institution by Supplier, with accompanying Documentation and Materials.

**Preventive maintenance:** carrying out maintenance aimed at a continued compliance of the Software with its requirements throughout the duration of the Agreement.





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**Software:** software including updated versions and accompanying Documentation, for which Supplier has granted Institution usage rights and/or which must be maintained by Supplier.

**SaaS service:** the making and keeping available of Software by Supplier for Institution 'remotely' via internet or another network, without Institution being given a physical device containing the Software, as well as additional services that are tied to this, such as data storage, Software and IT infrastructure maintenance and producing back-ups.

**Specifications:** the functional or technical specifications, included in a document that describes the functions and data to be incorporated into the Software, or that describes the Hardware properties

**Test report:** the results and potential approval of the Acceptance test that is drawn up in a test report.

**Update:** adjustments to the Product, both software and hardware, aimed at maintaining or improving the technical performance as per the agreed Specifications. Updates shall be provided by Supplier free of charge.

**Upgrade:** adjustments to the Product, both software and hardware, aimed at expanding the technical performance as per the agreed Specifications. Supplier may present a Quotation for an Upgrade.

#### Article 2 General provisions

- 2.1 If Supplier shall be bound by the Agreement to provide a type of information security, this security shall satisfy security specifications that have been agreed between Parties in writing. The security must be effective given the current state of technology and data sensitivity. Costs tied to arranging the security must remain reasonable. In addition, Supplier guarantees that he shall continue to comply with applicable regulations of information security in the healthcare industry. This at least comprises the following: NEN 7510, 7511, 7512 and 7513.
- 2.2 Certificates and access or identification codes provided by or because of Supplier are confidential and Institution shall treat them as such.
- 2.3 Supplier shall endeavour to its best ability that the Software will be uninterrupted and error free. Supplier shall make efforts to resolve errors in the Software as quickly as possible. In consultation with Institution, a repair of defects can be postponed until a newer version of Software is adopted. In addition, a temporary solution may be offered pending approval by Institution.
- 2.4 When developing Software, Supplier shall align as closely as possible to relevant law and regulations.

#### Article 3 Intellectual Property for ICT

- 3.1 For the duration of the Agreement, Supplier grants Institution a license on all supplied Software and on Software belonging to the Hardware. The license cannot be terminated by Supplier save for what lies determined in provisions in the Agreement.
- 3.2 Institution is entitled to make and use copies for non-production-environments.
- 3.3 Rights pertaining to intellectual property, which may be exercised anywhere and anytime, are vested with Institution. These rights shall be transferred by Supplier to Institution through signing the appropriate Agreement, or alternatively, each time by means of a separate document after Acceptance. Supplier shall grant every facility to accommodate this.





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- 3.4 When changing or improving the Software, intellectual property rights as regards the changed or improved Software shall be vested with the party that owns the intellectual property rights of the original Software.
- 3.5 Supplier shall indemnify Institution against any claim by a third party that is based on the allegation that Custom software, websites, data files, Hardware or other materials developed by Supplier constitute an infringement of the intellectual property rights of a third party.
- 3.6 Supplier shall indemnify Institution against third party claims as regards an infringement of the intellectual property rights of these third parties, also including comparable claims as regards know-how, unauthorised competition and so forth. Supplier shall commit to take all measures at its own expense that may contribute in preventing stagnation with Institution and limit extra costs and/or damage incurred by Institution due to an infringement.
- 3.7 Supplier shall not be permitted to give Custom software to third parties for inspection, or otherwise make this available, unless Institution grants permission for this in writing. Institution may attach conditions to this permission.
- 3.8 Supplier undertakes on Institution's first demand to cooperate with the deposit of source code and all accompanying technical Documentation pertaining to the Software, as well as help Institution being granted an individual right to issue as regards the deposited Software, for instance if there is a circumstance that is a (pending) threat to the company processes of Institution. When issuing the deposit, Institution shall obtain a license to perform necessary work for private use, such as the use and (arranging) maintenance of the source code and Documentation.
- 3.9 Institution is entitled to have the source codes and accompanying technical Documentation inspected by an independent expert either before or straight after deposit. Inspected elements may include:
- if the source code allows for the generation of a correct machine version of the Software, as it is being used by Institution at that time (regeneration);
  - if the source code is suitable to have a party other than Supplier perform continuous and efficient maintenance or adjustments to the Software;
  - if the source code contains viruses.
- 3.10 Supplier is obliged to facilitate this kind of inspection.

#### Article 4 Installation and Implementation

- 4.1 After delivery of the Hardware and/or Software, Supplier shall per the agreements complete its Installation and Implementation.
- 4.2 As part of the Installation and Implementation, Supplier shall run a test to assess by itself if the Hardware and/or Software is working correctly, in terms of individual parts and the whole and also in conjunction with the Hardware or in conjunction with Software.
- 4.3 When Supplier deems the Implementation to be complete, Supplier shall notify Institution of this in writing, which clears the way for the Acceptation test.
- 4.4 The Implementation also includes a briefing to make Institution and its staff members familiar with use of the Hardware and/or Software. This briefing shall be held by experts who are capable and suitable. The briefing shall as much as possible be held by the experts who were involved with the Implementation.
- 4.5 This article shall leave unaffected the provisions regarding warranty as described in article 12 of the general part of the GPC and article 5 Acceptance of this ICT module.





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#### Article 5 Determining Acceptance

- 5.1 As per agreements made, Parties shall perform an Acceptance test. This Acceptance test shall be listed separately in an appendix to the Agreement. If this Acceptance test is not included, the Acceptance test of article 6 shall prevail.
- 5.2 If the first Acceptance test does not lead to an approval of the Product, Supplier will immediately perform a repair after which the Acceptance test will be repeated. A second Test report will determine if the defects found in the first Acceptance test have been resolved and if the Product was approved thereafter.
- 5.3 If the Product is again rejected by Institution after the second Acceptance test, Institution shall be entitled to dissolve the Agreement in part or in full without judicial intervention and without further notice. This shall leave the right of Institution unaffected for claiming damage or allowing Supplier to still have the defects repaired at the latter's expense.
- 5.4 The results and approval of the Acceptance test shall be documented in writing in the Test report, which is to be signed by both Parties.
- 5.5 If the Performance is approved by Institution, the date on which the Acceptance test report was signed by Institution shall be the date of Acceptance.
- 5.6 Small Defects, including Defects that due to their nature and/or number do not reasonably impede professional use, shall not constitute grounds to withhold approval, notwithstanding the obligation of Supplier to a free repair of such Defects within a period to be agreed.
- 5.7 If the Performance is accepted subject to approval, the acceptance date shall be the date where all conditions have been satisfied that Institution has attached to the approval. Institution shall submit a written notification at what time these conditions were satisfied.
- 5.8 Payment to Supplier does not imply that Acceptance has taken place.

#### Article 6 Acceptance test

- 6.1 Acceptance shall only occur after an Acceptance test.
- 6.2 Errors shall mean a failure to meet the Specifications of the Software stated in writing by the Supplier. This error must be replicable.
- 6.3 The test period for an Acceptance test shall be 14 days.
- 6.4 Institution must assess during the Acceptance test if the delivered Software meets the Specifications stated prior by Supplier in writing and the requirements as set forth by Institution.
- 6.5 The term for the Acceptance test commences at the moment of delivery, or when an Installation and Implementation by Supplier have been agreed in writing, 14 days after completion of said Installation and Implementation.
- 6.6 The Software shall be deemed accepted between Parties:
  - if the errors described in the Test report have been repaired;
  - if Institution makes extensive use of the Software for productive or operational purposes: at the moment of the relevant commissioning.
- 6.7 If the Acceptance test reveals errors in the Software, Institution shall report the test results in writing to Supplier no later than the last day of the test period. Supplier shall repair the described errors within a reasonable timeframe. Possible solutions shall be presented to Institution before they are implemented.





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- 6.8 If the Software is delivered and tested in phases and/or parts, the non-acceptance of a certain phase and/or part shall not affect the Acceptance of a certain phase and/or part of a prior phase and/or another part.
- 6.9 Acceptance of the Software shall mean that Supplier has satisfied his obligations as regards the making available and delivering of Software and, if parties also agreed to Supplier installing the Software, his obligations as regards Installation and Implementation.

#### Article 7 Obligations to cooperate

- 7.1 Supplier shall make itself familiar with the objectives of Institution in entering into the Agreement.
- 7.2 Supplier shall bear the risk of selecting the Products to be delivered. Institution will take the utmost care in ensuring that the requirements to which Supplier's Product must adhere to are correct and complete.
- 7.3 The workspace and facilities of Institution will comply with all statutory requirements. Prior to work starting, Institution shall inform employees deployed by Supplier of all applicable Institution house and safety rules.
- 7.4 If in connection with the Performances of Supplier, Supplier makes available Software, Hardware or other means, Supplier will guarantee that it obtains all required licenses or approvals pertaining to the means that Supplier requires.
- 7.5 If Software is exclusively to be used in combination with certain Hardware, Institution shall in case of a malfunction of the Hardware be entitled to use the Software on different Hardware with the same qualifications for the duration of the malfunction.

#### Article 8 Maintenance

- 8.1 If agreed the Supplier shall perform maintenance as regards Software as determined in the Agreement. This maintenance obligation shall comprise the repair of errors in the Software as specified in article 6 and if agreed, the making available of new versions of the Software pursuant to article 9.
- 8.2 Institution shall report detected errors in the Software in detail. After receipt of this report, Supplier shall make sure that these errors are fixed within a reasonable timeframe. Supplier shall consult with Institution to determine urgency and what version or release contains the improvements. Temporary solutions or software detours or restrictions to avoid the problem shall only be permitted after written permission by the Institution.
- 8.3 If the maintenance pertains to Software that was not delivered to Institution by Supplier, Institution shall if need be make available the source code and the technical (development) documentation of the Software (including data models, designs, changelogs etc.) . Institution shall only present this if it has the authority to do so. Institution grants Supplier the right to use and modify the Software, including the source code and technical (development) Documentation of the Software in the context of performing the agreed maintenance.
- 8.4 If Supplier has the Hardware under its management for maintenance works, Supplier shall bear the risk of loss, theft of damage to the Hardware.





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#### Article 9 New Software versions

- 9.1 If a Supplier is considering to remove a functionality in an Update, this shall only be permitted after Institution has granted permission. This permission is documented in writing.
- 9.2 After the release of an Upgrade and Update of the Software, Supplier shall be obliged to continue support for older versions for at least 24 months.
- 9.3 Supplier shall consult with Institution if it is deemed necessary to adjust a system for the proper functioning of Software.
- 9.4 Updates and Upgrades comply with prevailing legislature and regulations.

#### Article 10 Support

- 10.1 If service provided by Supplier shall, based on the Agreement, also comprise support to users and or managers of the Software, Supplier shall provide advice about the use and function of the Software in a manner prescribed by Institution. Parties shall make arrangements about qualifications and the number of persons eligible for support.
- 10.2 If the service provided by Supplier shall, based on the Agreements, also comprise so-called 'stand-by services', Supplier shall arrange for adequate support. In that case, for urgent interests, Institution is eligible to invoke the support by Supplier of available employees if there is a malfunctioning in how the Software is functioning. Supplier shall guarantee that malfunctions are resolved in a timely fashion.
- 10.3 Maintenance and other agreed services shall be carried out from the day the Agreement comes into effect, unless parties agreed otherwise in writing.

#### Article 11 Back-up

If the service provided to Institution shall, based on the Agreement, comprise data of the Institution, Supplier shall in adherence to the agreed periods, and, in the absence of such an agreement, once per week, produce a full back-up of Institution data that is in his possession. Supplier shall store the back-up during the agreed term and in the absence of such agreements, during a term that is custom for Supplier. Supplier shall take proper care of the back-up.

#### Article 12 Exit clause

If the Agreement is terminated, Supplier shall at the Institution's first request do what is required to have another party continue the Agreement. Supplier shall also return all Documentation and data.

#### Article 13 Software of suppliers

- 13.1 If and to the extent Supplier makes available to Institution the Software of third parties, the relations between Supplier and Institution as regards this Software shall be governed by the (license) conditions of these third parties, leaving aside deviating provisions in these General Purchase Conditions insofar the applicability of the (license) conditions of these third parties have been communicated by Supplier to Institution in writing and these conditions were issued to and accepted by Institution prior or during the closing of the Agreement.





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- 13.2 If and to the extent these conditions of third parties are deemed non-applicable or void in the relations between Institution and Supplier, for whatever reason, the provisions in this module of the General Purchase Conditions in Healthcare shall prevail unabridged.

#### Article 14 SaaS service

- 14.1 Supplier is aware of the dependence of Institution towards the availability and proper functioning of the SaaS service. To this end, Supplier shall not be permitted to limit or block use of the SaaS service with technical measures, save for when Supplier has given Institution notice of default for an attributable shortcoming by Institution in its compliance with obligations arising from the Agreement. Furthermore, Supplier grants a reasonable term for fulfilment of at least 30 days and Institution continues to attributable come short in its compliance with these obligations. Supplier cannot make use of this right of suspension if Institution appeals to its right of suspension in light of a shortcoming by Supplier.
- 14.2 Supplier shall provide a solution fit for Saas to guarantee the continuity of data and SaaS services for Institution. To ensure continuity, availability, the use and maintenance of the Saas service, and the access to data of Institution stored in it, Parties shall at the latest before the effective date try to agree on a continuity scheme for calamities that is adequate for Institution, such as (but not limited to) the unavailability of the server on which the SaaS service is installed, bankruptcy or a suspension of payment of Supplier. If Institution is of the opinion that there is no adequate solution by the date listed, Institution shall be entitled to immediately terminate the Agreement.
- 14.3 In order to secure the data of Institution that is being processed for the SaaS service, Supplier shall arrange a daily back-up copy of the involved data and the underlying database structures on a server designated by Institution. Supplier shall provide valid Documentation about this structure to Institution each time. Complementing this, Institution shall be entitled to (let a party) produce copies of the SaaS service and data on the server for back-up purposes.

#### Article 15 Hosting

- 15.1 Supplier shall perform the hosting services as agreed with Institution.
- 15.2 If the Agreement has as its object the provision of disk space of Hardware, Institution shall not exceed agreed disk space unless the agreement explicitly foresees in the consequences of this. The Agreement shall only cater to the provision of disk space on an exclusive and specifically reserved server if this was explicitly agreed. Data traffic not used by Institution will be carried over to the next period. Any significant exceedance of provided disk space may only be charged with a fee after notification and written permission by Institution.
- 15.3 Supplier may only suspend the hosting service for maintenance, fully or in part, after written permission by Institution. Prior to commencing maintenance work, Supplier shall specify how long these activities will take and shall coordinate this with Institution.
- 15.4 If based on the Agreement Supplier performs services for Institution pertaining to domain names, like the application, extension, sale or transfer to a third party, Institution shall adhere to the rules and processes of the relevant authority. Supplier shall guarantee the application and registration of the domain name that is desired by Institution.
- 15.5 If Hardware rented by the Institution has extra attachments to it, Institution shall be entitled to compensation if these attachments are not removed or undone.
- 15.6 If rented Hardware is seized, Institution shall promptly notify Supplier of the seizure and its reason. Institution shall allow the bailiff to inspect the rental agreement.

