

LOCATUS NEDERLAND
GENERAL TERMS AND CONDITIONS OF SALE, DELIVERY AND PAYMENT

Article 1: Definitions

1.1 In these terms and conditions the terms listed below are defined as indicated.

User	: The natural person or legal entity that purchases products from Locatus.
Locatus	: Locatus B.V.
Databases (Legal Protection) Act	: The Act passed on 8 July 1999, which aligned the Netherlands' national legislation with Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases.
Data files	: All files supplied and made available by Locatus, either on paper, in digital form, online or in some other manner, containing a set of data, which may also include (paper or digital) maps and/or floor plans.
Documentation	: All manuals, diagrams, drawings, configurations, specifications and other written information pertaining to the products, which explains and illustrates the features and functions of the products.
Client	: The party to whom Locatus submits a quotation for the provision of certain products and/or services, and the party with whom Locatus concludes an agreement.
Agreement	: The agreement concluded between Locatus and the client regarding the provision of certain products and/or services by Locatus (including the granting of rights of use).
Products	: All products supplied to the client by Locatus (including the Standard Software product, access codes and carriers on which data is stored).
Standard Software product	: All existing and future software supplied to the client by Locatus.
Access codes	: A password and/or user name that is linked to (a person who represents) the user. Access codes may enable the user to access products that have been purchased.

Article 2: Applicability of these terms and conditions

- 2.1 These terms and conditions apply to (a.) all Locatus products and/or services, (b.) all related agreements, (c.) all related preparatory and operational procedures, such as the issuing of quotations and order confirmations and deliveries, and (d.) all ensuing obligations.
- 2.2 Conditions that deviate from these terms and conditions only apply (a.) to the extent that they are accepted in writing by Locatus, and (b.) to the agreement(s) in question.
- 2.3 If any of the provisions of these terms and conditions are found to be invalid or inapplicable for any reason whatsoever, this shall not affect the validity of the remaining terms and conditions. Should such a situation arise, the parties will agree a new provision that comes as close as possible to the intent of the original provision.

Article 3: Offers

- 3.1 Unless otherwise indicated, all offers, quotations and price estimates issued by Locatus in any form whatsoever are based on (information derived from) the data, designs and drawings supplied by the client and are non-binding. If a non-binding offer is accepted by the client, Locatus has the right to revoke the offer within two working days of receipt of acceptance of the offer.
- 3.2 The content of all price lists, brochures and printed materials (etc.) issued by Locatus is as accurate as possible. However, price lists, brochures and printed materials (etc.) are subject to change and the content of any such documents may not be regarded as a firm quotation.
- 3.3 Locatus reserves the right to decline orders or to demand payment in advance or on delivery without being obliged to give reasons.

Article 4: Agreement

- 4.1 An agreement is considered to have been concluded once (a.) Locatus has issued a written order confirmation, (b.) the client has accepted a binding offer, or (c.) Locatus has started work on the order. The order confirmation is considered to be an accurate and complete statement of the agreement, unless the client notifies Locatus to the contrary in writing within 5 working days of the date of the order confirmation.

- 4.2 If no order confirmation is issued due to the nature and/or extent of the services and/or deliverables in question, the invoice serves as the order confirmation and, as such, is considered to be an accurate and complete statement of the agreement, unless the client notifies Locatus to the contrary without delay.
- 4.3 Additions and changes to an agreement are only binding for Locatus to the extent that they are confirmed in writing by Locatus.

Article 5: Changes and additional work

- 5.1 If the client wishes to change, add to or revise the agreed services and/or deliverables, the client may submit a request to this effect to Locatus. Locatus is not obliged to agree to such a request. Agreement to such a request will always be issued in writing.
- 5.2 Irrespective of the submission of a request, as referred to in the previous clause, if additional work needs to be carried out, as far as possible Locatus will notify the client to this effect in writing as soon as possible, and certainly before beginning to carry out the additional work. In the absence of written notification to the contrary within 5 working days of the above-mentioned notification, the client is deemed to consent to the carrying out of the additional work, the associated costs and the revised delivery time, if the delivery time has to be extended.

Article 6: Delivery time

- 6.1 All (delivery) deadlines specified by Locatus are approximate and can never be regarded as final deadlines. In event of late delivery Locatus must be sent written notice of default and given a reasonable period to deliver the products and/or services in question.
- 6.2 Should Locatus fail to meet a specified delivery deadline for any reason whatsoever, the client is not entitled to compensation, nor is the client entitled to dissolve the agreement, or to suspend fulfilment of its obligations in relation to Locatus.

Article 7: Delivery

- 7.1 Locatus will deliver the products to the physical and/or electronic address specified by the client.
- 7.2 If it has been agreed that products and/or services are to be delivered in phases, Locatus may suspend further delivery and/or provision of services until the client has issued written approval of the completion of the previous phase and fulfilled all of its (financial) obligations in respect of the previous phase. Locatus is entitled to issue separate invoices for partial deliveries.

Article 8: Prices

- 8.1 All prices, fees and rates (hereinafter to be referred to as 'prices') are quoted in euros exclusive of VAT.
- 8.2 Additional work and deliveries agreed in accordance with article 5 of these terms and conditions and installation will be invoiced at the then current prices.

Article 9: Complaints

- 9.1 The client is obliged to inspect products delivered by Locatus for damage, errors and/or functional defects on delivery, or as soon as possible thereafter, and must notify Locatus of any damage, errors and/or functional defects in writing within 10 working days of delivery.
- 9.2 Following the expiry of the period referred to in the previous clause, the client is deemed to have approved the products and Locatus is no longer obliged to handle a complaint.
- 9.3 The fact that the client has notified Locatus of damage, errors and/or functional defects does not release the client from its payment obligations in relation to Locatus.

Article 10: Payment

- 10.1 Invoices must be paid by bank transfer to a bank account specified by Locatus within 15 days of the invoice date.
- 10.2 Payment must be made without deduction or setoff and may not be suspended for any reason whatsoever. If the client has a complaint about an invoice, the client must notify Locatus of the complaint by registered letter before the date on which the invoice is payable in accordance with the previous clause.
- 10.3 In the event of late payment the client will be in default by operation of law and, without prejudice to its other rights, Locatus will have the right to charge the client statutory interest on the outstanding amount from the date on which the invoice is payable to the date on which payment is made in full.
- 10.4 In the event of late payment all judicial and extrajudicial collection costs will also be charged to the client. Extrajudicial collection costs are subject to a minimum of € 250 and will be charged in accordance with the following scale:
- | | | |
|------------------------------------|----------|-----|
| On the first | € 3,000 | 15% |
| on anything over that amount up to | € 6,000 | 10% |
| on anything over that amount up to | € 15,000 | 8% |
| on anything over that amount up to | € 60,000 | 5% |
| on anything over | € 60,000 | 3% |

Article 11: Retention of title

- 11.1 If and to the extent that it has been agreed that the client is to acquire ownership of the products delivered by Locatus, ownership transfers to the client once all outstanding amounts owed by the client for the products and/or services (yet to be) delivered by Locatus in accordance with agreement, including interest and costs, have been paid in full.
- 11.2 The client is obliged to ensure that the products are properly secured and used as intended and is not entitled to pledge the products as security or otherwise encumber them with a restricted right without first obtaining written consent from Locatus.

Article 12: Standard Software products

- 12.1 In particular the following provisions apply if Locatus grants the client the right to use a Standard Software product.
- 12.2 If Locatus grants the client the right to use a Standard Software product, the right is non-exclusive and non-transferrable and is granted for the duration of the agreement. The client is only permitted to use the Standard Software product for its own internal use. The source code of the Standard Software product will not be placed at the client's disposal.
- 12.3 The Standard Software product (or any part thereof) may only be installed on the computer system on which it is first installed and may only be used in accordance with the licensing agreement on the number of workstations specified in the licensing agreement. If there is a problem with the computer system on which the Standard Software product is installed, after having notified Locatus of the situation in writing the client may use the Standard Software product on another suitable computer system until the problem is resolved.
- 12.4 The client is permitted to make a backup copy or copies of the Standard Software product for security and/or filing purposes.
- 12.5 In the absence of prior written consent from Locatus, the client is not permitted to lease, or to pledge as security, or to grant a third party any other right or claim to (copies of) the Standard Software product and corresponding documentation in any other manner, nor is the client permitted to publish, or to allow a third party to view the content of, or use, (copies of) the Standard Software product and corresponding documentation, nor is the client permitted to use the Standard Software product on behalf of a third party.
- 12.6 The client is not permitted to (instruct or allow a third party to) change, translate, add to or reverse engineer the Standard Software product.
- 12.7 If Locatus procures the Standard Software product from a supplier, the conditions under which the supplier grants rights of use apply in addition to, or in the event of inconsistency, instead of these terms and conditions. Locatus will notify the client of the relevant provisions on request.

Article 13: Data files

- 13.1 In particular the following provisions apply if Locatus supplies data files and/or places data files at the client's disposal.
- 13.2 If and to the extent that it is required, Locatus will see to it that the client is always supplied with the most recent version of the data files in question and will endeavour to ensure that the data contained in the data file placed at the client's disposal is as complete, accurate and up to date as possible.
- 13.3 The client may only use (the data in) the Data files for its own internal use. The client is not permitted to make copies of digital data files.
- 13.4 Any use other than that referred to in the previous clause which involves publishing and reproducing (parts of or data in) the data files, or incorporating (parts of or data in) the data files in other products (including data files) irrespective of whether the original data is recognisable as such, on paper, digitally or otherwise, is only permitted if Locatus has approved the use in question in writing in advance.
- 13.5 If Locatus issues written authorisation of the publication or reproduction of (parts of or data in) the data files, such authorisation is granted on the condition that Locatus is acknowledged as the source in the following manner: 'Source: Locatus'.
- 13.6 Following the expiry of the agreement data files must be irreversibly deleted from all information carriers within one working week.

Article 14: Services

- 14.1 In particular the following provisions apply if Locatus provides services.
- 14.2 Locatus will support the client as much as possible by answering telephone questions regarding the use of the products. Locatus is available to answer telephone questions from 09:00 to 17:00 on working days.
- 14.3 The client is under no obligation to purchase new versions and releases of products. However, Locatus is not obliged to continue to provide the support referred to in the previous clause for older versions and releases of the products.
- 14.4 If there is no explicit agreement regarding the price of services such as training and installation, which may be provided as part of a maintenance subscription, the invoice for the services in question will be based on the materials used, call-out charges and labour at the rates that currently apply.

Article 15: Force majeure

- 15.1 Neither party is obliged to fulfil the agreement if they are prevented from doing so by force majeure.
- 15.2 If a situation of force majeure has persisted for than 90 days, the parties have the right to terminate the agreement by issuing written notification to this effect without the need for recourse to the courts and without prejudice to Locatus' right to receive payment for services provided for the client prior to the situation of force majeure.
- 15.3 Force majeure on the part of Locatus is understood to include all circumstances that make it temporarily or permanently impossible for Locatus to fulfil its obligations.

Article 16: Guarantee

- 16.1 Subject to the provision set out in the fourth clause of this article, Locatus guarantees the products it supplies against design, programming, manufacturing and material errors (hereinafter to be referred to as 'errors'). This guarantee means that Locatus will do its utmost to repair any such errors or replace the products in question at its own discretion. Locatus does *not* guarantee that (the data contained in) data files is/are complete, accurate and up to date. Errors must be reported to Locatus as soon as they are discovered and must be reproducible for Locatus to address the error. Recovery of lost data is not covered by the guarantee.
- 16.2 The guarantee is invalidated if (a.) errors are partly or entirely due to improper, negligent or inexperienced use, or use for purposes other than normal (business) purposes, (b.) errors are caused by external factors such as fire or water damage, (c.) products are changed or maintained by parties other than Locatus, or (d.) the client fails to act in accordance with the provisions governing the right to use the products as set out in articles 12, 13 and 14 of these terms and conditions.
- 16.3 Fulfilment of the obligations associated with the guarantee constitutes full compensation. Locatus is not obliged to fulfil any further obligations and the client is not entitled to demand that the agreement be dissolved.
- 16.4 If Locatus procures the products from a supplier, the guarantee is limited to the guarantee given by the supplier. Locatus will notify the client of the relevant provisions on request.

Article 17: Limitation of liability

- 17.1 Without prejudice to the obligations imposed by the guarantee referred to in the previous article, Locatus is only liable to provide compensation for direct losses, these being losses that are directly and inextricably related to the incident that led to the losses. This limitation of liability applies to both contractual and extra-contractual liability, unless limitation of liability is not permitted by law. Locatus must be notified of such losses in writing as soon as the losses in question are discovered.
- 17.2 Locatus is only liable for direct losses caused by wilful intent or gross negligence on the part of its employees.

- 17.3 Locatus explicitly rejects any liability for indirect losses, including losses associated with the loss or corruption of data, loss of profits, trading losses and any other consequential losses incurred for any reason whatsoever.
- 17.4 Locatus is not liable for losses of any kind incurred as a result of improper, negligent or inexperienced use of the products delivered by Locatus.
- 17.5 The client is obliged to indemnify Locatus and its employees against third-party claims for compensation of tangible and intangible losses caused directly or indirectly by (the use of) products supplied by Locatus, unless the losses in question are the direct result of wilful intent or gross negligence on the part of Locatus employees.
- 17.6 Liability on the part of Locatus on account of attributable failure to fulfil the agreement concluded with the client is limited to 50% of the invoice amount for the agreement in question excluding VAT per incident, with a series of related incidents being treated as a single incident. Regardless of the circumstances, liability on the part of Locatus is limited to a maximum of the invoice amount for the agreement exclusive of VAT. If the agreement is primarily a continuing performance agreement and has been entered into for a period of more than one year, the invoice amount will be calculated as the sum of the fees charged for one year excluding VAT. Regardless of the circumstances, liability on the part of Locatus for losses incurred as a result of death or physical injury and for damage to property caused by unlawful action is limited to a maximum of € 450,000.

Article 18: Intellectual property rights and indemnity

- 18.1 In the absence of an explicit written agreement to the contrary, all intellectual property rights, including copyright and the rights described in the Databases (Legal Protection) Act, pertaining to the products, the underlying source code and the corresponding documentation, as well as copies, changes, translations and extended versions thereof, remain the property of Locatus or its suppliers at all times. The client is not permitted to remove or change any distinguishing marks that identify Locatus' (intellectual) property rights.
- 18.2 In taking possession of a product the client undertakes to implement appropriate (technical) measures to prevent third parties from using and its employees from misusing (the data contained in) the product.
- 18.3 Locatus reserves the right to make changes to (the source code of) products that have been delivered and to replace parts thereof, provided that this does not significantly affect the functioning of the product.
- 18.4 Locatus undertakes to indemnify the client against third-party claims based on allegations that (a part or parts of) a product or products developed by Locatus infringe the intellectual property rights of the third party, provided that the client (a.) immediately notifies Locatus of any such claim in writing as soon as the client becomes aware of the claim, (b.) leaves Locatus to handle the dispute, and (c.) extends every assistance in this respect.
- 18.5 If it is judicially established that products developed by Locatus infringe the intellectual property rights of a third party and the client is denied the right to use the products on this basis, Locatus will at its own expense and discretion:
- ensure that the client regains the right to continue using the product(s), or
 - modify the infringing part so that it becomes non-infringing, or
 - replace the infringing part with a non-infringing part with the same functions, or
 - take back the product in question and refund the price paid for the product minus reasonable depreciation, without being obliged to provide further compensation.

- 18.6 Locatus is not liable for infringement of intellectual property rights if the infringement is caused by (a.) (the use of) products delivered by itself in combination with products not delivered by itself, or (b.) the use of products delivered by itself in a manner other than that for which the products were developed or intended, or (c.) a change made to products delivered by itself without its written consent.
- 18.7 If Locatus procures the products from a supplier, the indemnification against third-party claims based on allegations that (a part or parts of) a product or products supplied by Locatus infringe the intellectual property rights of the third party and the corresponding liability are limited to the relevant terms and conditions stipulated by the supplier. Locatus will notify the client of the relevant provisions on request.
- 18.8 If Locatus is required to fulfil an order in accordance with designs, drawings, instructions and/or data supplied by or on behalf of the client, the client must guarantee that no third-party (intellectual property) rights will be violated as a result. The client is obliged to indemnify Locatus against all third-party claims based on allegations of violation of (intellectual property) rights that are found to be legally enforceable.
- 18.9 The liability stipulated in this article is the only liability Locatus assumes and the indemnity stipulated in this article is the only indemnity Locatus provides for infringement of (intellectual property) rights by products delivered by Locatus.
- c. The client proceeds or decides to cease or transfer (a substantial part of) its business activities, or to incorporate (a substantial part of) its business activities in a new or existing business, or to change the object of its business, or to dissolve its business.
- 20.2 In the situations referred to in the previous clause Locatus is entitled to:
- dissolve (part of) the agreement by sending the client written notification to this effect, and/or
 - demand immediate and full payment of any amounts owed to it by the client, and/or
 - invoke the retention of title referred to in article 11 of these terms and conditions, and/or
 - demand that the client provide adequate security to ensure the prompt fulfilment of its payment obligations,
- without being required to issue notice of default, without the need for recourse to the courts, without being obliged to provide compensation and without prejudice to any other rights available to it, such as rights in respect of overdue payments or interest.
- 20.3 If the agreement is dissolved or terminated the provisions pertaining to intellectual property, confidentiality, dissolution or termination of the agreement, applicable law and disputes continue to apply in full irrespective of the reason for the dissolution or termination of the agreement.

Article 21: Obligations on termination of the agreement

- 21.1 On termination of the agreement the client is obliged to remove the Standard Software product, data files and all copies thereof from its computer system and any other computer systems within 5 working days irrespective of the reason for the termination of the agreement.
- 21.2 The client is not permitted to use the Standard Software product or data files in any manner whatsoever if the right to use the Standard Software product or data files has expired or is no longer valid.

Article 22: General stipulation

- 22.1 The rights and/or obligations conferred and imposed by an agreement subject to these terms and conditions are non-transferrable and non-assignable and may not be used to establish a security right without the prior written consent of the other party.

Article 23: Applicable law and disputes

- 23.1 All agreements between the parties and the resulting legal relationships are exclusively subject to Dutch Law. The provisions of the Vienna Sales Convention (CISG) are expressly excluded.
- 23.2 All disputes arising from or related to (the interpretation or implementation of) these terms and conditions or an agreement subject to these terms and conditions, or any ensuing agreement, are to be settled by the court of competent jurisdiction in Utrecht or by the court of competent jurisdiction in the district in which the client is resides or is based, at Locatus' discretion.

Article 19: Confidentiality

- 19.1 The client is obliged to maintain total confidentiality regarding Locatus products, documentation, operations and services and the knowhow contained therein (hereinafter to be referred to as 'confidential information') and is not to disclose confidential information to a third party in any manner or form whatsoever. The client undertakes to ensure that confidential information is not disclosed to a third party through its own negligence or without the prior written consent of Locatus. The client is obliged to implement measures to ensure that the same obligation to maintain confidentiality is imposed on and accepted by its employees.
- 19.2 The parties also have a reciprocal obligation to maintain the confidentiality of the confidential information they pass to one another and undertake not to disclose any such information to a third party. The client is obliged to implement measures to ensure that the same obligation to maintain confidentiality is imposed on and accepted by its employees.
- 19.3 If the client fails to comply with the obligation stipulated in this article, the client will be obliged to pay Locatus an immediately payable penalty of € 250,000 for each instance of noncompliance discovered by Locatus. The said penalty is not open to judicial moderation and applies without prejudice to any other rights available to Locatus, such as its right to compensation.

Article 20: Dissolution/Termination

- 20.1 The client is in default by operation of law and all outstanding amounts become immediately due and payable, if:
- The client fails to promptly and properly fulfil any of the obligations imposed by the agreement. This applies in particular to payment obligations.
 - The client institutes bankruptcy proceedings or files a petition for involuntary liquidation, or is declared bankrupt or put into involuntary liquidation, or assigns its estate, or applies for a moratorium on payments, or if (some or all of) the client's assets are attached and the attachment is not withdrawn within 15 days.