



**bcs**  
HR Software

# General Conditions 2024

*Draait om jou!*

Carefully read our general terms and conditions for optimal cooperation and effective use of BCS HR software. These guidelines form the basis of our services and agreements.

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# 1. General Provisions

## Clause 1. Definitions

In these General Conditions, inter alia the following words are capitalised. All these words have the same meaning in the plural as in the singular.

**General Conditions:** these General Conditions of BCS.

**Direct Debit:** authorisation by the Client to BCS to debit the amounts due automatically from the (bank) account of the Client.

**BCS:** BCS B.V., having its registered office and principal place of business at Zuiderkruis 29, 5215 MV 's-Hertogenbosch, the Netherlands, registered in the Trade Register of the Chamber of Commerce under number 16055073.

**Errors:** any substantial failure to meet the functional or technical specifications of the software. An error only exists if the Client can prove it and if it is reproducible.

**Implementation Plan:** the plan for the systematic implementation of BCS's services, as quoted by BCS and accepted by the Client.

**Intellectual Property Rights:** all intellectual property rights, including copyrights, trademark rights, patent rights and trade name rights, in respect of any work, including documents, designs, computer software, customised software and/or other information recorded electronically or otherwise.

**Client Portal:** part of the Website and/or the Software on which BCS publishes specific client information.

**Licence:** the document stating that formal or legal consent has been given.

**Module:** separate and definable part of the Software.

**Quotation:** an offer including the terms and conditions applicable thereto, the pricing and the Implementation Plan of goods and/or services by BCS to the Client.

**Maintenance:** updates provided by BCS for remedying Errors and making functional improvements of the Software.

**Agreement:** the Quotation signed by the Client or the Agreement signed by the Parties and all associated Annexes and any supplementary agreements.

**Client:** the (legal) person who has assigned BCS to supply goods and/or services.

**Training Courses:** specially developed training sessions for employees of the Client's human resources and payroll departments who will work with BCS' Software.

**Parties:** BCS and the Client.

**SaaS:** Software-as-a-Service.

**Software:** BCS-developed software and/or applications of third-party software that are integrated in the software of BCS and/or linked to BCS software.

**Malfunction:** circumstances beyond the control of BCS which result in BCS being temporarily unable to perform services for the Client.

**Support:** the advice and assistance provided by BCS in the use of Software, and BCS's services and assistance in case of Malfunction.

**Website:** [www.bcs.nl](http://www.bcs.nl)

**Webshop:** the webshop where the visitor can order, inter alia, training courses and/or seminars.

## **Artikel 2.      Applicability**

1. These General Conditions apply to all offers, Quotations, Agreements and assignments concluded between BCS and the Client, and any resulting Agreements or legal acts - unless otherwise agreed in writing.
2. Applicability of any purchasing, procurement or other conditions of the Client is expressly rejected, unless BCS expressly accepts them and has confirmed this in writing.
3. If in these General Conditions or other communications with the Client reference is made to agreements agreed in writing, this means agreements recorded by written or electronic messaging, such as email.
4. BCS only accepts Agreements as an organisation, even if it is the explicit or tacit intention that an Agreement is executed by a specific person. Notwithstanding Articles 7:404, 7:407(2) and 7:409 of the Dutch Civil Code, persons working for or on behalf of BCS, whether or not in employment, are not personally bound or liable.
5. Without prejudice to the provisions of paragraph 4 of this Clause, these General Conditions are also stipulated for any third party who, whether employed or not, is engaged by BCS in the performance of an Agreement, or is or may be liable in connection therewith.

## **Artikel 3.      Quotation and formation of Agreement**

1. All Quotations are without engagement, unless the Quotation expressly states otherwise in writing. The Client guarantees the accuracy and completeness of the requirements, specifications of the performance and other data on which BCS bases its quotation, as stated by him or on his behalf to BCS.
2. A Quotation has a validity period of 30 days, unless otherwise stated in the Quotation.
3. The Agreement includes only the work described in the Quotation and/or the Agreement, including any changes subsequently agreed upon in writing.
4. BCS cannot reasonably be held to any adverse consequences of obvious mistakes and/or clerical errors in the Quotation, offer, Agreement and/or any other communication.

## **Clause 4.      Changes to the General Conditions and the SLA**

1. All Agreements are always subject to the most recent version of these General Conditions and the SLA. BCS is entitled to change these General Conditions or its SLA at any time. BCS will timely inform the Client about any changes in the General Conditions or the SLA. If the software and services continue to be used, the most recent versions of the General Conditions and the SLA will apply.
2. If the Client does not agree with a change as described in paragraph 1 of this Clause, the Client may object to that change. BCS will assess whether the objection can lead to an adjustment of the change. If the Client continues to object to the change, the Client has the option to terminate the Agreement after the change, subject to a notice period of two months, whereby the old General Conditions will continue to apply during those two months.

### **Clause 5. Change of the Agreement and additional work**

1. If, during the performance of an Agreement, it becomes apparent that it is necessary to change and/or supplement it, the Parties will change the Agreement in a timely manner and by mutual agreement. BCS is not obliged to change the Agreement and may require a separate written agreement.
2. Changes in, additions to and/or extensions of the Agreement shall only be binding if the Parties have agreed to them in writing. Any costs resulting from this shall be borne by the Client.
3. Additional work shall be compensated according to the agreed rates - and in the absence thereof according to BCS's usual rates - and shall only be invoiced by the Client upon written assignment provision with the next invoice, or upon completion of the additional work. Additional work shall mean the work that falls outside the content or scope of the work agreed in writing.

### **Clause 6. Obligations of the Client**

1. Any Quotation and/or offer made by BCS is based on the information provided by the Client. The same applies to the performance of the work by BCS. The Client guarantees the accuracy and completeness of the information, and will always provide BCS with all useful and necessary information in a timely manner, and will provide all cooperation for the proper execution of the Agreement.
2. The Client is responsible for: the correct use and application of BCS's products and services as described in the manuals provided; the implementation in the organisation and the monitoring activities, tests and other procedures necessary for this; as well as for securing the data, such as making regular back-up copies of data files.
3. If it has been agreed that the Client will provide equipment, materials or data on information carriers, these shall meet the specifications necessary for the performance of the work. The Client is responsible for the functioning thereof.
4. In the event that BCS employees perform work at the Client's office, the Client will provide the facilities reasonably required by these employees free of charge, such as - if applicable - a working space with telephone, data communication facilities, etc. The Client is obliged to furnish and maintain the Client's locations, equipment and facilities in which or with which persons working for BCS are working for the performance of the making available, as well as to take such measures and provide such instructions for the performance of the Agreement as are reasonably necessary to prevent the persons concerned from suffering damage during the performance of the Agreement. If damage is suffered by the persons concerned due to the Client's sites, equipment and/or facilities, the Client shall be liable for that and shall indemnify BCS against all claims of the persons concerned in this respect.

### **Clause 7. Obligations of BCS**

1. BCS shall perform the work to the best of its ability with all due care, in accordance with any agreements and procedures established in writing with the Client. All work performed by BCS shall be performed on the basis of a best-efforts obligation, unless BCS expressly promises a result in the written Agreement and such result is described with sufficient definiteness.
2. The performance of the Agreement takes place exclusively for the benefit of the Client. Third parties cannot derive any rights, claims or reliance from the content of the services performed.

### **Clause 8. Duration and termination**

1. Articles 7:408(1) and 7:208(2) of the Dutch Civil Code do not apply.
2. The Agreement is entered into for a period of one year, unless agreed otherwise (Initial Period). After the expiry of the Initial Period, the Agreement will be tacitly renewed each time for a period of one year, unless the Client has notified BCS as described in paragraph 3 at least six (6) months before the end of the (Initial or extended) period that it wishes to terminate the Agreement. Termination of Modules shall take place taking into account a termination period of at least three (3) months, instead of the six (6) months stipulated in this paragraph.
3. The Client can only terminate the Agreement by filling in and filing the form on the Website: <https://bcs.nl/en/opzeggen>. Terminations through any other means will not be processed.

4. The Agreement terminates by the end of the Initial respectively the applicable extended period if the Agreement is terminated by the Client (i) in the manner as described in paragraph 3 of this article, (ii) subject to the notice period as described in paragraph 2 of this article and (iii) by the end of the Initial or extended period. If the Client's notice of termination does not comply with (i) and/or (iii), it shall not result in a valid termination of the Agreement. In that event, the Agreement shall continue in full force and effect.

If the Client's notice of termination does not meet requirement (ii), then the notice of termination is accepted as a notice of termination against the next opportunity. Until that first opportunity, the Agreement continues. In practice, this means the following: Suppose an Agreement with a Client is renewed each time on January 1st. If the Client wishes to terminate this Agreement, then this Client must terminate the Agreement on the 30th of June at the latest (by the next January 1st) using the termination form on the Website in order for the Agreement to end as of the next January 1st. If the Client terminates the Agreement on August 6th, the Agreement will not end on the next January 1st, but on January 1st of the following year. Until such time, the Agreement shall remain in force and the Client shall therefore also owe the monthly fee.

5. BCS may terminate the Agreement at any time, subject to twelve (12) month's notice.

6. Termination by Client of a Training Course Subscription must be done in accordance with the conditions set forth in article 37 of the General Conditions.

## **Clause 9. Prices and licences/quantities**

1. All prices are exclusive of VAT and any other levies imposed by the government, unless BCS indicates otherwise. Unless explicitly stated or agreed otherwise in the Quotation and/or offer, travel hours, travel and accommodation expenses, extra hours and other special costs related to the work, are not included in the prices and rates. If these costs are not included, BCS may charge them separately.
2. BCS has the right at all times to adjust its rates to developments in the price level in the market, including increases in the cost price by its supplier(s). The starting point in this respect is the Statistics Netherlands (CBS) price indexation for Business Services. If cost price increasing taxes, levies or import duties are introduced or changed by a government measure, or if, after the conclusion of the Agreement, government measures take place as a result of which the cost price of the services provided by BCS is increased, BCS has the right to pass these costs on to the Client - even if a fixed price has been agreed. BCS will notify the Client of this immediately.
3. If a price per item included in the Agreement is based on purchased quantities (such as, for example, the number of pay slips, user licences, active users, etc.), an increase in the purchased quantities during the term of the Agreement does not result in an adjustment of the agreed price per item.  
A reduction in these numbers can only be made after the term of the Initial Period.  
A reduction in quantities may affect the agreed price per item.
4. If, through no fault of BCS, the Software is not implemented or put into use by the Client within the agreed period, the Client shall owe BCS the monthly (licence and/or user) fees from the time of the agreed implementation date.

## **Clause 10. Invoicing and payment**

1. BCS will invoice the amounts due by the Client on a monthly basis in advance. BCS reserves the right to invoice on an interim basis at any time.
2. Notwithstanding paragraph 1 of this Clause, a different invoicing time applies to the following services:
  - a. Pay slips: per payroll retrospective;
  - b. Implementation costs: before the start of the implementation;
  - c. Consultancy costs: before the start of the consultancy work.
3. If BCS is (temporarily) unable to fulfil its obligations for this Agreement due to circumstances for which the Client is responsible, the Client shall remain fully liable for payments to BCS.
4. Payment by the Client to BCS shall be made:
  - a. by Direct Debit with a payment term of 14 days after the invoice date. BCS is entitled to collect the amount due from the moment the invoice is sent;
  - b. by transferring the amount due within thirty (30) days of the invoice date.
5. If the Client fails to fulfil its payment obligation, the Client shall be in default and shall therefore owe statutory commercial interest on the outstanding amount. No summons or notice of default shall be required for this. If the Client is a legal entity, or a natural person acting in the exercise

of a profession or business, extrajudicial collection costs will be claimed: 15% of the principal amount due (excluding VAT), with a minimum of € 75.00.

6. With the payments, the Client first pays the interest and costs due. These shall always be deducted from the oldest outstanding claim, even if the Client states that the payment relates to a later claim.

#### **Clause 11. (Delivery) dates**

1. All (delivery) dates stated by BCS have been determined to the best of BCS' knowledge on the basis of the information known to BCS at the time the Agreement was entered into. The (delivery) dates stated by BCS are at all times indicative and are not firm (delivery) dates, unless expressly agreed otherwise in writing.
2. When BCS fails to meet a (delivery) date, the Client must first give BCS notice of default and allow BCS a reasonable period to yet fulfil its obligations. Only when BCS has not fulfilled its obligations after expiry of this reasonable period, it is in default.
3. BCS is not bound by (delivery) dates that can no longer be met due to circumstances beyond its control that occurred after the Agreement was entered into. If the exceeding of any (delivery) date is imminent, the Parties will consult with each other as soon as possible.

#### **Clause 12. Communication**

1. For efficient and correct communication, the Client shall provide BCS with at least two email addresses: the general email address of the Client and the email address of the Client's contact person. The Client undertakes to keep these email addresses up-to-date at all times. All notices sent by BCS to these email addresses shall be deemed to have been received on the day they are sent. BCS can never be held liable for the use of these email addresses.
2. In addition to communication by email, BCS posts relevant information on its Website. The Client undertakes to keep himself informed of the content of the Website and the Client Portal at all times.
3. The Client cannot derive any rights from the information on the Website and/or the Client Portal. If it appears that this information contains inaccuracies, the Client must give BCS the opportunity to correct the information.

#### **Clause 13. Confidentiality and takeover of personnel**

1. BCS and the Client shall ensure that all information received from the other Party which is known or should reasonably be known to be of a confidential nature shall remain confidential. This prohibition does not apply to BCS if and insofar as the provision of the relevant information to a third party is necessary pursuant to a court order, a statutory regulation or for the proper execution of the Agreement by BCS. The Party receiving confidential information shall only use it for the purposes for which it was provided. Information shall in any case be considered confidential if it is designated as such by one of the Parties.
2. The Client acknowledges that Software coming from BCS is always of a confidential nature and contains BCS's trade secrets.
3. During the term of the Agreement and up to and including 12 (twelve) months after the termination of the Agreement, the Client shall not employ any employees or freelancers of BCS who have been involved in the execution of the Agreement, or otherwise, directly or indirectly, let work be performed by them, without BCS's prior express written consent. Such consent may be subject to conditions, including the condition that the Client pays a reasonable fee to BCS.



**Clause 14. Privacy en gegevensverwerking**

1. Als door Opdrachtgever in het kader van de Overeenkomst en/of bij gebruik van de dienst persoonsgegevens worden verstrekt aan BCS en BCS in dat kader zal optreden als verwerker, sluiten partijen een verwerkersovereenkomst.
2. De verantwoordelijkheid voor de gegevens die met gebruikmaking van een dienst van BCS door Opdrachtgever worden verwerkt, ligt volledig bij de Opdrachtgever. Opdrachtgever staat er tegenover BCS voor in dat de inhoud, het gebruik en/of de verwerking van de gegevens niet onrechtmatig is en geen inbreuk maakt op enig recht van een derde.
3. Voor zover beide Partijen als afzonderlijke verwerkingsverantwoordelijke in de zin van de AVG kwalificeren, draagt iedere Partij zorg voor de naleving van de toepasselijke wet- en regelgeving op het gebied van gegevensbescherming ten aanzien van de verwerking(en) waarvoor zij verantwoordelijk zijn.

**Clause 15. Telecommunication and security**

1. If telecommunication facilities (including connections via the Internet) are used by BSC in the execution of the Agreement and/or in the Client's use of the service, the Client is responsible for correct and authorised use. BCS is not responsible and/or liable for security, transmission errors or availability thereof.
2. When processing data with telecommunication facilities, BCS may provide to the Client access and/or identification codes. The Client shall keep such access and/or identification codes confidential and shall ensure that only authorised persons use them. BCS is entitled to change the provided access and/or identification codes.
3. The Client is obliged to adequately secure its systems, infrastructure and telecommunication facilities.
4. The Parties shall take all measures that can reasonably be requested to prevent the occurrence and spread of viruses, spyware, trojan horses, etcetera, which may result in changes in and/or dysfunction of the Software.
5. BCS is entitled to change the security measures taken at any time.

**Clause 16. Clause 16. Liability**

1. BCS's liability in the event of an attributable failure to perform the Agreement or on any other legal ground (including Articles 6:162, 6:230(2) and 6:271 of the Dutch Civil Code) shall be limited to compensation of direct damage up to a maximum of the amount of the price paid (excluding VAT), determined on the basis of the Agreement, per event, whereby a series of events counts as one event. If the Agreement is mainly a continuing performance agreement, with a term of one year or longer, the price to be stipulated is the total of the fees (excluding VAT) paid by the Client to BCS over the three months preceding the occurrence of the damage. In no event, however, shall the total compensation exceed € 200,000.00 (in words: two hundred thousand euros) per event, whereby a series of events counts as one event.
2. Direct damage means exclusively:
  - a. the demonstrable reasonable costs that the Client would have to incur to have BCS' performance comply with the Agreement. This damage shall not be compensated if the Agreement is terminated or if the damage is attributable to the Client;
  - b. the demonstrable costs incurred by the Client for being forced to keep its old system(s) and related facilities operational for longer because BCS failed to deliver on a binding delivery date. These costs shall be reduced by any savings resulting from the delayed delivery.
3. The total liability of BCS for damages due to death, physical injury or due to material damage to property shall never exceed the amount paid out by BSC's insurer for that specific claim. In that context, it is important to note that BCS has taken out a professional liability insurance with a maximum insurance cover of € 1,000,000.00 per claim with a maximum of € 2,500,00.00 per



insurance year, and a business liability insurance with a maximum insurance cover of € 1,250,000.00 per claim with a maximum of € 2,500,000.00 per insurance year.

4. BCS's liability for indirect damage, including - but not limited to - consequential damage, loss of profits, missed savings, reduced goodwill, damage due to business stagnation, damage as a result of claims by customers of the Client, damage relating to the use of goods, materials or software of third parties prescribed by the Client to BCS, and damage relating to the engagement of suppliers prescribed by the Client to BCS, is excluded. Also excluded is any liability of BCS related to mutilation, destruction or loss of data or documents.
5. Insofar as the exclusion of indirect loss as set out in paragraph 4 would not stand or cannot be invoked in court, BCS's liability for said indirect loss shall in any event be limited to the amount of loss paid out by BCS's insurer for a specific claim. In that context, BCS refers to the insured amounts mentioned in paragraph 3.
6. The exclusions and limitations of liability of BCS described in paragraphs 1 through 5 of this Clause are entirely without prejudice to the other exclusions and limitations of liability of BCS described in these General Conditions.
7. The exclusions and limitations referred to in paragraphs 1 to 5 and paragraph 11 shall lapse if and insofar as the damage is the result of intentional or deliberate recklessness on the part of BCS's management.
8. On penalty of forfeiture of all claims based thereon, the Client must report to BCS any shortcoming by BCS in the performance of the Agreement, in writing and with stating reasons, within one week of its discovery. This is a specification of the statutory complaint duty of Articles 6:89 and 7:23 of the Dutch Civil Code in respect of time from discovery. This is without prejudice to the legal obligation(s) to complain with regard to the term as of the time from which the shortcoming should reasonably have been discovered.
9. Unless performance by BCS is permanently impossible, the liability of BCS due to attributable failure in the performance of an Agreement arises only if the Client immediately gives BCS written notice of default. In this respect, there must be a reasonable period to resolve the failure, and that BCS should remain imputably in breach of its obligations even after that period has expired. The notice of default must contain an as detailed as possible description of the failure, so that BCS is able to respond adequately.
10. Without prejudice to shorter statutory expiry periods, any claim of the Client against BCS shall in any event expire by the expiry of (24) twenty-four months from the time the services to which a claim relates have been performed by BCS. The Client shall indemnify BCS and employees of BCS against all claims of third parties that are in any way related to the (performance of the) Agreement and/or use by the Client or third parties of any products or services of BCS, and shall hold them harmless in this respect. This applies in particular to claims of third parties as a result of a defect in a product or system delivered by the Client to a third party, which partly consisted of equipment, software, data files or other materials delivered by BCS, except if the Client makes it plausible that the damage was solely and fully caused by equipment, data files or other materials of BCS.
11. The Client bears the risk for any damage caused by defects or unsuitability of any items that originate from him, are prescribed by him or must be procured from a supplier prescribed by him. The same applies to non-delivery, late delivery or incorrect delivery of such items. The Client shall be liable for any damage caused by wrongful acts of subcontractors and their auxiliary persons engaged by the Client.
12. For the performance of its work, BCS may use email. The risk associated with this, in whatever manner, lies with the Client and never leads to any liability on the part of BCS.
13. The provisions of this Clause as well as all other limitations and exclusions of liability mentioned in these General Conditions also apply to all (legal) persons deployed by BCS for the execution of the Agreement.

**Clause 17. Third-party software**

1. If BCS makes (standard) third-party software available to the Client, the general conditions of such third party will apply to such software, unless BCS notifies the Client otherwise in writing. The licence agreement is concluded between the Client and the third party concerned.
2. If, for whatever reason, the said third-party general conditions do not apply or are expressly declared inapplicable in writing, the provisions of these General Conditions shall apply.
3. BCS is never liable for any damage caused by application of third-party software.

**Clause 18. Intellectual property rights**

1. All intellectual property rights, trade secrets and know-how in all Software, computer programs, data files and equipment or other materials developed or to be developed by or on behalf of BCS, such as analyses, models, techniques, designs, documentation, reports, quotations, training materials and the preparatory materials thereof, are vested exclusively in BCS or its licensors. The Client will only receive the rights of use and powers expressly granted for the duration of the Agreement by these General Conditions or otherwise (e.g., in the terms and conditions accompanying the Software).
2. The Client's right of use is non-exclusive, non-transferable to third parties, non-sublicensable and non-pledgeable.
3. All intellectual property rights, trade secrets and know-how arising or resulting from the Client's use of the Software or the modification, maintenance or further development of the Software (including customisation) will belong to BCS.
4. The Client is not allowed to remove or make unrecognisable any mark, sign or indication concerning intellectual property rights in the Software.
5. The Client shall not reproduce, copy or make public the Software, data files or any other (training) materials in any way whatsoever.
6. BCS indemnifies the Client against any claim by a third party based on the allegation that Software or other materials developed by BCS itself infringe an intellectual property right of that third party, on the condition that the Client informs BCS forthwith in writing of the existence and substance of the claim and leaves the handling of the matter, including the making of any settlements, entirely to BCS. To this end, the Client grants BCS the necessary powers of attorney, information and cooperation to defend itself against such claims. This obligation to indemnify shall lapse if the alleged infringement relates to:
  - a. materials made available to BCS by the Client for use, treatment, processing or maintenance; or
  - b. changes made or caused to be made by the Client to the software, website, data files, equipment or other materials without BCS's written permission.
7. If it is irrevocably established in law that the Software or other materials developed by BCS itself infringe any intellectual property right belonging to a third party, or if, in BCS's judgment, there is a reasonable chance that such infringement will occur, BCS will ensure, if possible, that the Client can continue using the delivered, or functionally equivalent other Software or other materials. Any other or further indemnity obligation of BCS due to any infringement of a third party's intellectual property right is excluded.
8. BCS is never obliged to carry out any data conversion, unless expressly agreed in writing.

**Clause 19. Subcontracting and transfer**

1. BCS reserves the right to engage third parties at all times if this is advisable for the proper execution of the work.
2. The Client may not transfer the Agreement and the rights and obligations arising therefrom to third parties without BCS's express prior written consent. A restriction on the transferability of rights of action has, in addition to contract law effect, also property law effect within the meaning of Article 3:83(2) of the Dutch Civil Code.
3. The Client gives BCS the right in advance to assign all or part of the Agreement to:
  - a. parent, subsidiary and/or sister companies;
  - b. third parties, in the event of a merger or acquisition.
4. BCS will inform the Client of this in the shortest possible time.

**Clause 20. Force majeure**

1. BCS is not responsible for the loss, disappearance, mis-delivery and/or (late) arrival of any documents it sends by regular post.
2. In the event of any Malfunction or other cases of force majeure, such as - non-exhaustively - war, danger of war, natural disasters, strikes, fire or other impeding circumstances that do not depend exclusively on BCS, BCS shall not be liable for any consequences arising therefrom, such as - but not limited to - non-delivery or late delivery. BCS will endeavour to remedy Malfunctions and other force majeure cases in the shortest possible time.

**Clause 21. Termination**

1. If BCS does not have the necessary data, information, wishes and/or requirements at its disposal, or not in time and/or not in accordance with the Agreement, or if the Client fails to meet his obligations in any other way, BCS has the right to terminate the Agreement, to dissolve it or to suspend the performance of the work. Any costs incurred as a result in accordance with BCS's usual rates shall be borne by the Client. The same applies to all other rights to which BCS is entitled under the law. BCS does not accept any liability in these cases.
2. BCS is free to terminate the Agreement immediately and with immediate effect or to dissolve the Quotation or the Agreement, without any obligation of compensation or indemnification, in case of liquidation, (application for) suspension of payments or bankruptcy, seizure at the Client's expense (if the seizure has not been lifted within three months), debt restructuring or any other circumstance as a result of which the Client can no longer freely dispose of his assets. All claims of BCS against the Client shall in that case be immediately due and payable.
3. Dissolution does not give rise to any undoing obligations (within the meaning of Article 6:271 of the Dutch Civil Code).
4. Both amounts invoiced by BCS prior to termination and amounts not yet invoiced for services already rendered shall be payable in full in the event of termination for whatever reason, and shall be immediately due and payable at the time of termination.
5. Rights and obligations under the Agreement that by their nature and content are intended to continue to exist and apply, shall remain in full force and effect after termination of the Agreement.

**Clause 22. Consequences of termination**

1. After termination of the Agreement, the Client may request the (digital) data and/or other data due to him from BCS for up to one month after the termination of the Agreement. BCS is obliged to return the data to the Client. The Parties will jointly make further arrangements regarding the manner of return.
2. The Client's entire production environment will be archived for one year, and then permanently deleted from the backup location. Upon request, the backup can be deleted earlier.

**Clause 23. Miscellaneous**

1. In case of any conflict between any provision of a written Agreement between the Parties and these General Conditions, the provisions of the Agreement shall prevail. In case of any conflict between the General Conditions and an Implementation Plan, the General Conditions shall prevail. In case of conflict between the General Provisions of these General Conditions and the Special Provisions, the Special Provisions shall prevail.
2. Should one or more of the provisions of these General Conditions be null and void or annulled, the remaining provisions of these General Conditions shall remain fully applicable. BCS will then offer new provisions to replace the null or nullified provisions, whereby if and to the extent possible the purpose and purport of the original provisions will be observed.

**Clause 24. Applicable law and disputes**

1. BCS's Quotations and the Agreement and all legal relationships between the Parties arising therefrom shall be governed by Dutch law.
2. The District Court of Oost-Brabant, location 's-Hertogenbosch, is exclusively competent to take cognisance of all disputes in connection with a Quotation, an Agreement and/or any other agreement concluded in execution of or in connection with the Agreement. Nevertheless, BCS has the right to submit a dispute to a court with jurisdiction according to the law.

## 2. Special Provisions - Provision of Services

The Special Provisions contained in this section "Provision of Services" shall, in addition to the General Provisions of these General Conditions, apply if BCS provides services, such as advising, consulting, outsourcing payroll administration and designing, developing, implementing or managing Software.

### **Clause 25. Execution of the work**

1. Any agreements concerning a service level are always only expressly agreed in writing.
2. If it has been agreed that the services will be provided in phases, BCS is entitled to postpone (suspend) the commencement of the services belonging to a phase until the Client has approved in writing the results of the preceding phase.
3. Only if expressly agreed in writing, BCS is obliged to follow timely and responsible instructions given by the Client during the performance of the services. BCS is not obliged to follow instructions that change or supplement the content or scope of the agreed services. However, if such instructions are followed, the relevant work will be charged to the Client.
4. If an Agreement for services has been entered into with a view to performance by a specific person, BCS is always entitled, after consultation with the Client, to replace this person by one or more other persons with the same qualifications. The exclusions mentioned in Clause 2 paragraph 4 of the General Conditions apply.

### **Clause 26. Availability of the Service**

1. BCS will endeavour to achieve uninterrupted availability of its systems and networks, and access to data stored by BCS, but offers no guarantees in this regard unless and to the extent that BCS has promised a result in the Agreement or Service Level Agreement (SLA).
2. If the services are (partly) delivered through services and/or networks of BCS, BCS will make every effort to allow as little downtime as possible in doing so. BCS offers no guarantees as to the exact amount of uptime, unless agreed otherwise in the Agreement and/or the SLA.
3. Subject to evidence to the contrary, the availability measured by BCS will constitute full proof.
4. BCS will make every effort to keep the software it uses up-to-date. However, BCS is dependent on its supplier(s) in this regard. BCS has the right not to install certain updates or patches if, in its opinion, this will not benefit a correct delivery of the service.
5. If, in BCS' opinion, there is a danger to the functioning of the computer systems or the network of BCS or third parties and/or to the provision of services via a network, in particular due to excessive sending of emails or other data, poorly secured systems or activities of viruses, Trojans and similar software, BCS has the right to take all measures it reasonably considers necessary to avert this danger or to reduce the consequences.

### 3. Special Provisions - SaaS (Software-as-a-Service)

The Special Provisions contained in this chapter 'SaaS' shall, in addition to the General Provisions of these General Conditions and the provisions in the chapter 'Provision of Services', apply if BCS provides services under the name or in the field of SaaS.

#### **Clause 27.    Clause 27. Right of use/Licence**

1. For the duration of the Agreement, BCS grants the Client the non-exclusive and temporary right to use the Software and related documentation, which right is accepted by the Client. A licence fee is payable by the Client for the right of use.
2. The Client may only use the Software for his own use within his company or organisation, for the use agreed upon or intended by BCS, and for the number of users agreed upon with BCS.
3. Software may only be installed at an authorised representative of the Client, such as an accountant of the Client, if this has been expressly agreed in writing between the Parties. The provisions of the Agreement remain fully applicable and the Client guarantees compliance with them. The authorised representative cannot derive any rights from the Agreement.
4. The right of use is not transferable to a third party without the prior written consent of BCS. The Client may not duplicate, sell, rent, sub-licence, dispose of or grant any limited rights to or disclose the Software or make it available to a third party in any way or for any purpose - even if the third party in question uses the Software exclusively for the Client.
5. BCS is entitled to make changes to the content or scope of the SaaS Service and the Software. If these changes are substantial and lead to a change in the procedures in force at the Client, BCS will inform the Client of these changes as timely as possible. BCS is entitled to charge the Client additional costs for the use and taking in use of such changes.
6. The Client shall not modify, cross-compile or decompile the Software. Nor shall the Client reverse-engineer or otherwise use or examine the Software in a manner not provided for in the Agreement. The source code of the Software and the technical documentation relating to the development of the Software will not be made available to the Client.
7. BCS is entitled to take the SaaS service fully or partially out of service for maintenance or other forms of service, and will ensure that the taking out of service does not last longer than necessary.
8. At the Client's request, BCS shall, on or after termination of the right to use the Software, make available to the Client all of the Client's data at its usual rates, unless the Parties agree otherwise in writing. BCS is not obliged to provide assistance in view of any data conversion requested by the Client.

**Clause 28. Obligations of the Client**

1. The Client shall ensure access to the necessary network and the costs of using the network.
2. The Client is responsible for the functioning of the software and equipment or other peripheral equipment purchased by it (from third parties) both on their own and with each other, as well as with the Software.
3. BCS shall not be liable for any damage related to viruses occurring at the Client's premises and/or for any form of indirect or consequential damage in that connection, including in any case the damage related to the loss of data or backups, unless this is the result of intent or deliberate recklessness on the part of BCS's management.

**Clause 29. Accounts and Access**

1. The Client must supply or complete the data required for the creation of an account correctly and completely. Changes in this information must be notified by the Client to BCS as soon as possible, and the Client indemnifies BCS against any consequences arising from any incorrectness and/or incompleteness of this information.
2. The Client is responsible for the security and confidentiality of the account, username and password. The Client shall ensure that the chosen passwords are changed at least every year. The Client is not allowed to provide access to the account to any unauthorised persons.

**Clause 30. Implementation and Acceptance**

1. BCS delivers the Software to be developed to the Client in accordance with the specifications agreed in writing. Delivery is completed after the implementation work has been completed at the Client's premises and, in the opinion of BCS and the Client, the Software meets the specifications and the intended operation has been achieved. Unless otherwise agreed, if no acceptance procedure has been agreed, the Software shall be deemed accepted after delivery.
2. If an acceptance procedure has been agreed, the Client has the right to test the Software for 30 days after delivery, unless the Agreement specifies a different period. During this testing period, the Client is not permitted to use the Software for productive purposes, except with BCS's permission.
3. The software will be deemed accepted between the Parties:
  - a. If no acceptance test has been agreed between the Parties: on delivery or on completion of the installation;
  - b. If an acceptance test has been agreed between the Parties and BSC has not been notified in writing of any Errors to BSC by the Client before the end of the test period on the first day after the test period;
  - c. If BCS is informed in writing by the Client of any Errors in the Software before the end of the test period, BCS shall make every effort to remedy the Errors to the best of its ability within a reasonable period of time, after which the Software shall be deemed to have been fully accepted after the said Errors have been remedied; or
  - d. From the moment the Client uses the Software for productive purposes.
4. Acceptance of the Software may not be withheld on grounds other than those relating to the specifications expressly agreed between the Parties and, furthermore, not on account of the existence of minor Errors, i.e., errors that do not reasonably prevent the operational or productive taking into use of the Software. Acceptance may furthermore not be withheld with regard to aspects of the Software that can only be assessed subjectively, such as the design of user interfaces.
5. If during the performance of the acceptance test it becomes apparent that defects occurring in the Software impede the progress of the acceptance test, the Client will inform BCS of this in writing and in detail, in which case the test period will be interrupted until the Software has been



modified in such a way as to remove such impediment. BCS will in that case remedy the reported defects within a reasonable period of time.

6. If the Software is delivered and tested in phases, the rejection (non-acceptance) of a particular phase shall not affect the approval (acceptance) of an earlier phase.
7. Acceptance of the software in one of the ways referred to in this Clause will result in BCS being fully discharged of its obligations regarding the development and provision of the Software and, where appropriate, if installation by BCS has also been agreed, of its obligations regarding the installation of the Software. Acceptance of the Software does not affect the Client's rights under the warranty described in Clause 31.

### **Clause 31. Error remedy**

1. Unless otherwise agreed in writing by the Parties, BCS shall, with regard to the SaaS service and the Software, only be subject to the warranty obligations in this Clause.
2. BCS does not guarantee that the Software to be made available within the framework of the SaaS service is error-free and functions without interruptions. During a period of three months after acceptance of the Software, BCS will endeavour to remedy any Defects in the Software within a reasonable period of time if and insofar as it concerns Software developed by BCS itself and the defects in question have been reported to BCS by the Client in writing, have been described in detail and are reproducible. Where appropriate, BCS may postpone the remedy of defects until a new version of the Software is put into use. BCS has the right to implement temporary solutions, program bypasses or problem-avoiding restrictions in the Software. If the Software has been developed on behalf of the Client, BCS may charge the Client for the costs of remedy in accordance with its usual rates.
3. BCS has a best-efforts obligation concerning remedying Errors reported after the end of the period referred to in paragraph 1 of this Clause, unless a maintenance agreement has been concluded between the Parties which includes such a duty to remedy Errors.

## 4. Special Provisions - Seminars, workshops and training courses

The Special Provisions contained in this chapter "Seminar, workshop and training courses" shall, in addition to the General Provisions of these General Conditions, apply if the Client registers for or the Client participates in a BCS seminar, workshop or training course.

### Clause 32. Registration

1. Registration for a seminar, workshop and/or training course (hereinafter: Training Courses) of BCS is possible per Client, for a single employee or for a group of employees via the Webshop or by telephone. The location of the Training Course can be found in the Webshop. In mutual consultation, the Training Course can also be given at the Client's premises.
2. BCS is only obliged to act on a registration if it is confirmed in writing by BCS no later than 5 (five) working days before the start of the Training Course.
3. Training Courses are given at the then current rates.

### Clause 33. Cancellation

1. BCS will use all reasonable endeavours to ensure that the Training Course takes place. BCS reserves the right to cancel the Training Course due to lack of the required number of registrations. If BCS cancels the Training Course, the participant will be notified no later than 5 (five) working days before the start of the Training Course. Any fees already paid by the Client will be refunded by BCS.
2. The Client may cancel a registration for a Training Course free of charge in writing up to 5 (five) working days before the start of the Training Course via the contact form on the Webshop, or by email via [info@bcs.nl](mailto:info@bcs.nl). In the event of later cancellation, the Client will be charged half of the cost of the Training Course.
3. If the Client fails to comply with an obligation under these General Conditions, resulting in a cancellation or postponement of a Training Course, the Client shall owe BCS a cancellation fee in the amount of half the cost of the Training Course.
4. Where a Training Course cannot take place, BCS shall in no event be liable for any loss suffered, irrespective of the reason for cancellation and on whatever legal basis.

### Clause 34. Payment

1. The costs for the Training Course will be charged to the Client after registration and/or after attending the relevant Course in accordance with the provisions of Clause 10 of these General Conditions.

### Clause 35. Changes

1. BCS reserves the right to make changes to the content, dates, place and any other specifications in necessary cases. BCS is not liable for any costs and damages borne by the participant and/or registrant resulting from this.

**Clause 36. Intellectual property**

1. All material plus supplementary documentation provided by BCS at Training Courses may not be reproduced without the express written permission of BCS or the copyright holder.
2. The participant is granted a non-exclusive, non-transferable right to use the Software used in the Training for training purposes. This right of use ends upon completion of the Training Course. The participant is not permitted to reproduce and/or make available the said Software or any parts thereof to third parties.

**Clause 37. Training Courses Subscription**

1. For a fixed amount per year, the Client can register for and participate in Training Courses without limitation (hereinafter: Training Courses Subscription). Per Training Course, the Client can register a maximum of 5 (five) persons for a Training.
2. The Training Courses Subscription is entered into for a period of one year. After the expiry of this period, the Training Courses Subscription shall be tacitly renewed each time for a period of one year, unless the Client has notified BCS in writing at least one month before the end of this period that it wishes to terminate the Training Courses Subscription.
3. The Client can only cancel the Training Courses Subscription by sending an email to [info@bcs.nl](mailto:info@bcs.nl) or via the contact form on the Webshop.
4. Interim cancellation by the Client of a Training Course Subscription is not possible. The costs for the Subscription will then remain due.
5. BCS may terminate the Training Course Subscription subject to twelve (12) months' notice.