

General terms and conditions of Soft Elements

| | | |
|------------|-------------------------------------|----|
| ARTICLE 1 | DEFINITIONS | 1 |
| ARTICLE 2 | GENERAL..... | 1 |
| ARTICLE 3 | OFFERS AND AGREEMENTS..... | 1 |
| ARTICLE 4 | TERMINATION & REFUND | 1 |
| ARTICLE 5 | PRICES AND COSTS..... | 2 |
| ARTICLE 6 | PAYMENT..... | 2 |
| ARTICLE 7 | DELIVERY | 2 |
| ARTICLE 8 | SUSPENSION AND ANNULMENT | 3 |
| ARTICLE 9 | LIABILITY | 3 |
| ARTICLE 10 | TRANSFER OF RISK | 4 |
| ARTICLE 11 | FORCE MAJEURE | 4 |
| ARTICLE 12 | SAMPLES, MODELS AND PROTOTYPES..... | 4 |
| ARTICLE 13 | INSPECTION AND DEFECTS | 4 |
| ARTICLE 14 | RETENTION OF TITLE | 4 |
| ARTICLE 15 | COLLECTION COSTS | 5 |
| ARTICLE 16 | INDEMNIFICATION | 5 |
| ARTICLE 17 | INTELLECTUAL PROPERTY RIGHTS | 5 |
| ARTICLE 18 | DEVELOPMENT OF SOFTWARE..... | 7 |
| ARTICLE 19 | SOFTWARE USE AND MAINTENANCE | 8 |
| ARTICLE 20 | SECURITY AND PASSWORDS | 9 |
| ARTICLE 20 | CONFIDENTIAL INFORMATION..... | 10 |
| ARTICLE 21 | APPLICABLE LAW AND DISPUTES | 10 |

General terms and conditions of Soft Elements

Article 1 Definitions

In these general terms and conditions, the following definitions will be used, unless explicitly agreed otherwise in writing:

Soft Elements: user of the general terms and conditions;

Customer: contracting party of Soft Elements, either acting as a natural person, a self employed person or a legal person;

Contract: the agreement between Soft Elements and the customer.

Services include among others:

- (Custom made) software;
- Other information technology services.

Article 2 General

1. The articles and conditions of these general terms are applicable for every offer, quotation or agreement between Soft Elements and the customer, unless the parties have explicitly stated otherwise in writing.
2. These agreements are also applicable for all agreements with Soft Elements, in which third parties need to be involved for the implementation.
3. General terms and conditions of the customer, or any other terms or agreements, are not applicable, unless explicitly agreed in writing, that the general terms of the user are applicable, excluding these general terms.
4. If any provision of these general terms and conditions is void or annulled, the other provisions of these general terms and conditions shall remain in full force.

Article 3 Offers and agreements

1. All offers and other statements by Soft Elements are valid for a period of fourteen days and free of obligation, unless the customer explicitly indicates otherwise in writing.
2. Acceptance of offers needs to be confirmed in writing by the customer to Soft Elements within fourteen days.
3. An agreement is concluded after confirmation in writing by Soft Elements, or if Soft Elements has started to carry out the assignment.
4. Offers do not automatically apply for continuous assignments or additional orders.
5. Soft Elements retains the right to have third parties perform (certain parts of) the development and/or implementation.

Article 4 Termination & refund

Termination

1. Customer may unregister and therewith terminate the agreement at any time without any administrative charges. The agreement will be terminated after the current term is finished. Unregistering will terminate the right and the possibility to use the software.
2. In case customer abuses the service or in case of serious misconduct, Soft Elements reserves the right to discontinue the agreement, and to refuse all access and use of the service.
3. Any remaining and unpaid fees, including the legal interest and other amounts that Customer accrued prior to the effective date of termination, shall be paid to Soft Elements and will remain claimable after termination.
4. Termination of this agreement shall rescind and revoke all rights granted to or accrued by customer to access and use the service.
5. Soft Elements may terminate this agreement if customer fails to perform any of its obligations, or otherwise breaches this agreement, and fails to cure the failure or breach within fifteen (15) days after written notice.
6. In case of termination for non-payment, Soft Elements may disable Customer's access to and use of the service until Soft Elements has received full payment.
7. Termination of this Agreement will not limit either party from any remedies or rights.

8. A credit card chargeback, or any other payment chargeback, will not terminate the agreement, nor will it relieve customer of his payment obligation.
9. The following provisions of this agreement will survive any termination of this agreement: confidentiality, indemnity, intellectual Property, liability, payment, refunds, termination and warranty.

Refunds

1. Soft Elements maintains a no refund policy because the Service is a SaaS (Software as a Service) application.
2. Before registration, customer should always make sure that the service performs according to the needed tasks. For evaluation versions or demos and videos for reference, please check our website <https://www.passwhisper.com>.

Article 5 Prices and costs

1. All mentioned prices in the offer by Soft Elements are based upon the price defining factors at the time of the agreement.
2. Soft Elements is allowed to calculate price increases to the customer if Soft Elements can provide credible reasoning that the price defining factors have increased between the time of the offer and implementation of the agreement.
3. Price changes are also possible if the content of the agreement or assignment changes, if the agreement or assignment is prolonged, if third parties change their prices, or if the applicable laws and regulations change, which do apply to Soft Elements.
4. Price changes can be implemented without further notice to the customer.
5. The customer is allowed to rescind the contract if the increase of the price occurs within three (3) months after the contract was concluded. After expiration of this term the customer is allowed to annul the contract if the increase amounts to more than 10% of the initial purchase price.
6. All prices used by Soft Elements are exclusive VAT and other taxes, levies, duties, and costs. These costs might consist of transportation, packing, delivery, administration, or other costs in order to properly carry out the agreement, unless explicitly stated otherwise in writing.

Article 6 Payment

1. Excluding the right of netting, withholding or a discount, the customer pays no later than twentyone (21) days after the invoice date, unless the invoice mentions a different payment term. Payments will be done in a manner specified by Soft Elements, in the currency mentioned on the invoice.
2. Soft Elements retains the right to invoice in another way, depending on the agreed upon payment term.
3. The customer is, without the necessity of a written notice to pay, legally in default, if the customer did not pay within the term of twentyone (21) days. Payment has taken place if the customer has credited the bank account of Soft Elements.
4. In case of liquidation, bankruptcy, seizure or moratorium of the customer, the claims of Soft Elements on the customer are directly and completely claimable.
5. Soft Elements retains the right to deduct the payments made by the customer firstly from the costs, subsequently from the indebted interest, and finally deduct the payments from the main sum and the current interest. All costs, concerning payment, including bank costs or costs concerning bills of exchange or other payment methods are for account of the customer.
6. Soft Elements can reject a payment offer, without being legally in default, if the customer persists in another order of payment ranking.
7. Soft Elements can reject a payment offer of the entire main sum, if the customer did not pay the indebted and current interest as well as the costs. The customer remains obliged to pay the full price.

Article 7 Delivery

1. Delivery times and –terms in offers and/or agreements of Soft Elements are indicative and are never a firm term. In case of exceeding a delivery time or –term the customer needs to write a notice of default.
2. In case of exceeding delivery times and –terms in offers and/or agreements of Soft Elements the customer is not entitled to annulment or compensation, unless the parties have explicitly agreed

otherwise in writing.

3. Contractual delivery times and –terms only apply if the necessary data has been provided to Soft Elements and if possible payments, that need to be paid at the beginning of the implementation, have been received.

Article 8 Suspension and annulment

1. Soft Elements retains the right, without legal proceedings, to suspend to fulfill its obligation or to annul the agreement, in the following situations, if the customer:
 - does not, does not in due time, does not completely or does not considerably fulfill one or more obligations in the contract;
 - arranges a debt agreement with its creditors;
 - applies for an official moratorium;
 - is officially in bankruptcy;
 - liquidates, sells or transfers the company;
 - transfers the control of the company to a third party;
 - dishonestly uses goods, services or software of Soft Elements;
 - disseminates information which is violating (inter)national laws and regulations;
 - will not fulfill its obligations, according to information which gives good reasons for Soft Elements to believe the customer will fail to perform;
2. Soft Elements retains the right to annul the agreement if performance of the agreement cannot possibly be demanded any longer, or if performance cannot reasonably be demanded any longer.
3. If the agreement will be annulled, the claims of Soft Elements on the customer are immediately claimable. If Soft Elements suspends to fulfill its obligations, Soft Elements retains its rights according to the contract and the law.
4. If the agreement will be annulled due to a serious failure of the customer to fulfill its obligations, like incorrect or unprofessional use, untimely payment, transfer to third parties etcetera, the customer is obliged to pay at least the contractual price, including possible costs, increased with a compensation of 10% of the completed services and/or delivered goods.
5. Soft Elements continuously retains the right to claim compensation for damages.

Article 9 Liability

1. Soft Elements's liability for not fulfilling its obligation is explicitly limited to the value of the provided services related to the obligation in question.
2. Soft Elements is not liable for indirect damage, which includes consequential damage, lost profits, lost savings, lost cost reduction, loss of goodwill, mutilated or damaged data or materials, damage due to business interruptions and claims from third parties.
3. Soft Elements is not liable for damage, of any kind, due to the fact that Soft Elements used data provided by the customer, which is incorrect or incomplete, unless the incorrectness or incompleteness of the data should have been knowable to Soft Elements.
4. Soft Elements is not liable for damage, which originated from (technical) trouble, interference or jams, or dysfunctional (electronic and/or data) connections or the quality of these connections, regardless of the fact if they are implemented by Soft Elements or third parties.
5. Soft Elements is not liable for damage, due to (criminal) intent, recklessness, (major) negligence of third parties hired by Soft Elements.
6. Using and/or publishing the provided software, website, or other digital material is done at the full risk and expense of the customer.
7. For any right for damages to exist, the customer must always report the damage or injury in writing to Soft Elements as soon as possible after it occurs. Any claim for damages against Soft Elements will expire twelve (12) months after the claim arises.
8. The customer shall indemnify Soft Elements against all third-party claims because of product liability ensuing from a defect in a product or system which has been delivered by the customer to a third party and which partly consisted of equipment, software or other materials delivered by Soft Elements, except if and insofar as the customer proves that the damage or injury was caused by that equipment, software or other materials.
9. The provisions in this article also apply for the benefit of all legal and natural persons utilised by Soft Elements in executing the agreement.

Article 10 Transfer of risk

The risk of damage, or the risk of loss of objects or data, including programs and/or source code, which is part of the agreement, transfers from Soft Elements to the customer at the moment it will be in control of the customer or a third party appointed by the customer.

Article 11 Force majeure

1. Every failure to fulfill the obligations in the contract cannot be contributed to Soft Elements, if it was impossible for Soft Elements to perform due to circumstances, which were beyond its control, and which cannot be contributed to Soft Elements according to the law, legal act or public legal perception.
2. According to these terms, force majeure comprises all anticipated or non-anticipated external causes, of which Soft Elements has no control and result in the fact that Soft Elements cannot fulfill its obligations. Events concerning hosting- or network providers, or other third parties Soft Elements has no control over, strikes and other actions by employees of Soft Elements and/or its suppliers are included as well.
3. Soft Elements retains the right to claim force majeure if the circumstance, which prevents the fulfillment of the obligation, materializes after Soft Elements should have fulfilled its obligation.
4. Both parties suspend their contractual obligations during the period of force majeure, until the time when performance is reasonably possible again.
5. Both parties are immediately permitted, out of court, without the necessity of a notice of default and without the possibility to claim damages, to annul the contract if the situation of force majeure exceeds a period of one month.
6. A force majeure claim can be presented to Soft Elements only in writing, with a delivery note, within fourteen (14) days after the force majeure came into existence.

Article 12 Samples, models and prototypes

If Soft Elements has showed and/or provided the customer a program, program code, source code, a (sample) website, a sample, a model, a prototype or any other concept or example, than it is just presuming to be showed and/or provided as an indication, unless the parties have explicitly agreed that the final product shall fully resemble the example.

Article 13 Inspection and defects

1. The customer shall inspect the delivered objects at the moment of delivery, or at least as soon as possible. The customer inspects if the quality and quantity of the delivered objects are conform the contract, at least inspects if it meets the requirements in the particular business environment.
2. Claims because of defects regarding provided services or claims concerning sent invoices from Soft Elements to the customer can only be made in writing, within five (5) business days after the defects were identified by the customer.
3. If the customer makes a claim within due time, the customer shall still be obliged to receive and to pay the (still to be) provided services. Claims by the customer never give a right to suspend its payment obligation.

Article 14 Retention of title

1. All objects, including designs, samples, models, drawings, films, software, sketches, (electronic) files etc., which are delivered to the customer by Soft Elements, shall remain Soft Elements' property until the customer has fulfilled all obligations in the contract.
2. The customer is not entitled to pledge the objects, which are subject to Soft Elements' retention of title, or to encumber the objects in any other way.
3. If third parties seize objects or have the intention to seize objects, which are subject to Soft Elements' retention of title, or want to claim any other rights on the objects, the customer shall notify Soft Elements immediately.
4. A customer acting as a reseller may sell and re-deliver all items subject to Soft Elements' retention of title insofar as that is common in connection with its normal business operations. If the customer creates a new object wholly or partly from the objects delivered by Soft Elements, the customer shall create that object solely for Soft Elements and the customer shall hold the newly created object for Soft Elements until the customer has paid all amounts owed according to the contract.

In that event, Soft Elements shall possess all rights as the owner of the newly created object until the customer has made full payment.

5. As the occasion arises, rights shall always be granted or transferred to the customer on the condition that the customer pays the agreed fees fully and in a timely manner.
6. Notwithstanding any delivery obligation, Soft Elements may maintain possession of the objects, products, proprietary rights, intellectual property rights, information, documents, databases and interim or other results of Soft Elements' services which have been received or generated in connection with the contract until the customer has paid all amounts owed to Soft Elements.

Article 15 Collection costs

1. If the customer is unable to fulfil the obligations in the contract and is therefore legally in default, all costs in order to collect the indebted amount, out of court, are without further notification for account of the customer. In case of a claim regarding a debt receivable, the customer owes at least 15% in collection costs to Soft Elements.
2. If the customer is unable to fulfil the obligations in the contract and is therefore legally in default, all reasonable legal-, court-, execution- and collection costs, are without further notification for account of the customer.
3. If the customer is unable to fulfil the obligations in the contract and is therefore legally in default, the indebted and current interest of 1,5% per month (unless the legal interest is higher, in which case the legal interest shall apply), shall without further notification be paid by the customer to Soft Elements. The interest will be calculated from the moment the customer is legally in default until the moment of full payment made by the customer to Soft Elements.

Article 16 Indemnification

1. The customer Indemnifies Soft Elements against claims of third parties concerning intellectual property rights on objects or data, which was provided by the customer and which objects or data is used for the implementation of the contract.
2. If the customer provides Soft Elements with information carriers, electronic files or software etcetera, it safeguards that it is free of viruses, defects or other potentially harmful elements.

Article 17 Intellectual property rights

1. All intellectual and industrial property rights to software, websites, databases, equipment or other materials developed or provided by Soft Elements, such as analyses, scripts, source code, designs, documentation, reports, offers, as well as preparatory materials in that regard, shall be held solely by Soft Elements, its licensors or its suppliers. The customer shall only acquire the rights of use explicitly granted in these terms and conditions and by law. Any other or more extensive right of the customer to reproduce software, websites, databases or other materials shall be excluded. A right of use to which the customer is entitled shall be non-exclusive and non-transferable to third parties.
2. If Soft Elements is prepared to undertake to transfer an intellectual or industrial property right, such an obligation may only be entered into explicitly in writing. If the parties explicitly agree in writing that intellectual or industrial property rights regarding software, websites, databases, equipment or other materials specifically developed for the customer shall be transferred to the customer, this shall not affect Soft Elements' right to apply and to use, either for itself or for third parties, the parts, general principles, ideas, designs, documentation, works, programming languages, source code and the like underlying that development, without any limitation on other purposes. Nor shall a transfer of intellectual or industrial property rights affect Soft Elements' right to undertake developments for it self or third parties, which are similar to those done for the customer.
3. The customer shall not be allowed to remove or modify any designation concerning the confidential nature or concerning copyrights, trademarks, business names or other intellectual or industrial property rights from the software, websites, databases, equipment or materials.
4. Soft Elements shall be allowed to take technical measures to protect the software or with a view to agreed restrictions in the duration of the right to use the software. The customer shall not be allowed to remove or evade such a technical measure. If security measures result in the customer being unable to make a back-up copy of software, Soft Elements shall provide the customer with a back-up copy upon request.
5. Unless Soft Elements provides a back-up copy of the software to the customer, the customer may

make one back-up copy of the software, which may only be used to protect against involuntary loss of possession or damage. The back-up copy may only be installed after involuntary loss of possession or damage. A back-up copy must have the same labels and copyright designations as are present on the original version.

6. In these general terms and conditions, "errors" shall mean a substantial failure to meet the functional or technical specifications stated in writing by Soft Elements and, in the case of custom-made software and websites, the functional or technical specifications explicitly agreed between the parties in writing. An error shall only exist if the customer can prove it and if it can be reproduced. The customer shall be obliged to notify Soft Elements of errors immediately. All rights to support / guarantee will cease to be valid if the customer makes any changes in the software. If the customer has already paid for support, for instance on the basis of a support contract, all rights to support / guarantee will cease to be valid and all payments made will not be reimbursed in case of the above mentioned changes in the software. In case of custom made software the functional or technical specifications are only applicable if explicitly agreed upon in writing between the parties.
7. Soft Elements shall indemnify the customer against any third-party cause of action based on the claim that software, websites, databases, equipment or other materials developed by Soft Elements itself infringe an intellectual or industrial property right applicable in The Netherlands, on the condition that the customer immediately informs Soft Elements in writing about the existence and substance of the cause of action and let Soft Elements handle the matter completely, including with respect to agreeing to any settlements. To that end, the customer shall provide the necessary powers of attorney, information and cooperation to Soft Elements to defend - if necessary, in the customer's name - against these causes of action. This indemnification obligation shall be extinguished if the alleged infringement relates (i) to materials provided by the customer to Soft Elements for use, adaptation, processing or incorporation, or (ii) to changes the customer has made or caused third parties to make to the software, website, databases, equipment or other materials.
8. If it has been established in court as an incontrovertible fact that the software, websites, databases, equipment or other materials developed by Soft Elements itself infringe any intellectual or industrial property right held by a third party or if, in Soft Elements' judgment, it is likely that such infringement will occur, Soft Elements shall, if possible, ensure that the customer can continue to have undisturbed use of the delivered objects, or functionally equivalent other software, websites, equipment or the other materials concerned, for example, by modifying the infringing parts or by acquiring a right of use for the customer. If, in its exclusive judgment, Soft Elements cannot ensure or cannot ensure except in a manner that is unreasonably burdensome (financially or otherwise) for it that the customer can continue to have undisturbed use of the delivered objects, Soft Elements shall take back the delivered objects, with crediting of the acquisition costs minus a reasonable user's fee. Soft Elements shall not make its choice in this regard until after the customer has been consulted. Any other or more extensive liability or indemnification obligation on Soft Elements' part due to the infringement of a third party's intellectual or industrial property rights shall be completely excluded, including liability and indemnification obligations on Soft Elements' part for infringements caused by using the software, websites, databases, equipment and/or materials delivered
 - in any form not modified by Soft Elements,
 - in connection with objects or software not delivered or furnished by Soft Elements or
 - in another manner besides that for which the equipment, software, websites, databases and/or other materials were developed or intended.
9. The customer warrants that there are no third-party rights, which are inconsistent with providing Soft Elements with equipment, software, materials intended for websites (visual material, text, music, domain names, logos etc.), databases, or other materials, including draft material, intended for use, adaptation, installation or incorporation (for example, in a website). The customer shall indemnify Soft Elements against any action based on the claim that such provision, use, adaptation, installation or incorporation infringes a third-party right.
10. All materials, such as websites, promotion materials or other materials, developed by Soft Elements can be used for Soft Elements' promotion purposes, unless the parties have explicitly stated otherwise in writing.
11. The customer is not entitled to use Soft Elements' business name and/or Soft Elements' trademarks in any document without Soft Elements' prior written consent.

1. If specifications for or a design of the software to be developed were not already given to Soft Elements when the contract was concluded, the parties shall in consultation specify in writing which software shall be developed and in which manner this shall occur. Soft Elements shall develop the software with due care based on data to be provided by the customer, the correctness, completeness and consistency of which the customer shall warrant. If the parties have agreed to use a development method, which is characterised by the design and/or development of software parts being subject to a further setting of priorities to be determined during execution of the contract, this setting of priorities shall always occur in consultation between the parties.
2. Soft Elements shall be entitled, but not required, to examine the correctness, completeness or consistency of the data, specifications or designs given to it and, if any imperfections are discovered, to suspend the agreed work until the customer has eliminated the imperfections concerned.
3. The customer shall only acquire the right to use the software in its own company or organisation. The software's source code and the technical documentation created in developing the software may only be made available to the customer if and insofar as explicitly agreed in writing. The customer shall only be entitled to make changes to this software if Soft Elements explicitly permitted this in writing. If Soft Elements is obliged at law to make the source code and/or technical documentation available to the customer, Soft Elements may demand a reasonable fee.
4. Soft Elements shall deliver the software to be developed to the customer and install it as much as possible in accordance with the specifications recorded in writing, with installation only occurring if installation by Soft Elements has been agreed in writing. In the absence of express agreements in this regard, the customer itself shall install, set up, design parameters for and tune the software and, if necessary, adjust the equipment and user environment used in this connection. Unless explicitly otherwise agreed, Soft Elements shall not be required to convert data.
5. If an acceptance test has been agreed, the test period shall be fourteen (14) days after delivery or, if installation by Soft Elements has been agreed in writing, after the installation is completed. The customer shall not be allowed to use the software for productive or operational purposes during the test period. Soft Elements may always require, hence, even if this has not been explicitly agreed, that the customer conduct a proper test of sufficient scope and depth using sufficiently qualified employees as to interim or other results of the development work and that the test results be reported to Soft Elements in writing and in a well organised and comprehensible manner.
6. The software shall be considered accepted by the parties if:
 - a) an acceptance test has not been agreed between the parties: at the time of delivery or, if installation by Soft Elements has been agreed in writing, when the installation is completed, or
 - b) if an acceptance test has been agreed between the parties: on the first day after the test period, or
 - c) if Soft Elements receives a test report before the end of the test period: at the time that the errors in that test report have been fixed.In deviation from this, if the customer makes any use of the software for productive or operational purposes before express acceptance, the software shall be considered fully accepted as from the start of that use.
7. If, when the agreed acceptance test is conducted, it turns out that the software contains errors, which impedes the progress of the acceptance test, the customer shall provide written, detailed notice to Soft Elements, in which case the test period shall be interrupted until the software has been adjusted in such a manner that this impediment is eliminated.
8. If, when the agreed acceptance test is conducted, it turns out that the software contains errors, the customer shall inform Soft Elements about the errors through a written and detailed test report no later than on the last day of the test period. Soft Elements shall do its utmost to fix the aforementioned errors to the best of its ability within a reasonable time period, with Soft Elements being entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the software.
9. Acceptance of the software may not be withheld on other grounds besides those relating to the explicitly agreed specifications between the parties nor because of the existence of minor errors, that is, errors which do not reasonably preclude putting the software to operational or productive use, notwithstanding Soft Elements' obligation to fix these minor errors under the guarantee clause, if applicable. In addition, acceptance may not be withheld with regard to aspects of the software, which can only be evaluated subjectively, such as the design of the user interfaces.
10. If the software is delivered and tested in stages and/or parts, the non-acceptance of a particular

stage and/or part shall not affect any acceptance of an earlier stage and/or another part.

11. Acceptance of the software shall have the effect that Soft Elements is fully discharged for performing its obligations concerning developing and providing the software and, if installation by Soft Elements has also been agreed in a particular case, its obligations concerning installing the software.
12. In the absence of an explicitly agreed invoicing schedule, all amounts pertaining to development of the software shall be owed when the software is delivered or, if installation by Soft Elements has also been agreed in a particular case, when the installation is completed.

Article 19 Software use and maintenance

1. Soft Elements shall grant the customer the non-exclusive right to use the software. The customer shall always strictly comply with the use restrictions agreed between the parties. Subject to the other provisions in these general terms and conditions, the customer's right of use shall only include the right to load and run the software.
2. The customer may only use the software in its own company or organisation on the one processing unit and for a specific number or type of users or terminals for which the right of use has been furnished. Insofar as not otherwise agreed, the customer's processing unit on which the software is used for the first time and the number of terminals connected to that processing unit at the time of initial use shall be considered the processing unit and number of terminals for which the right of use has been furnished. In the event there is a malfunction in the aforementioned processing unit, the software can be used on another processing unit for the duration of the malfunction. The right of use may pertain to multiple processing units insofar as this is explicitly apparent from the contract.
3. The right of use shall not be transferable. The customer shall not be allowed to sell, lease, sub license or alienate the software and data carriers on which it has been recorded, grant restricted rights to this software or these data carriers or provide them to a third party in any manner or for any purpose whatsoever, give a third party remote or non-remote access to the software or place the software with a third party for hosting, not even if the third party in question will only use the software for the customer's benefit. The customer shall not modify the software except in connection with fixing errors. The customer shall not use the software to process data for third parties ("timesharing"). The software's source code and the technical documentation generated in developing the software shall not be made available to the customer, not even if the customer is prepared to pay financial compensation for making them available. The customer acknowledges that the source code is confidential in nature and that it includes Soft Elements' trade secrets. Exceptions to this clause are allowed if the parties explicitly agreed this in writing.
4. Soft Elements shall deliver the software to the customer on the agreed type and format of data carriers and, if installation by Soft Elements has been agreed in writing, shall install the software at the customer's venue. In the absence of express agreements in this regard, the customer itself shall install, set up, design parameters for and tune the software and, if necessary, adjust the equipment and user environment used in this connection. Unless explicitly otherwise agreed, Soft Elements shall not be required to convert data.
5. If the parties have not agreed on any acceptance test, the customer shall accept the software in the condition in which it is at the time of delivery, hence, with all apparent and non-apparent errors and other defects.
6. In the absence of an explicitly agreed invoicing schedule, all amounts pertaining to making the software available and the right to use the software shall be owed when the customer explicitly agreed to the purchase agreement, or, if installation by Soft Elements has also been agreed in writing in a particular case, when the installation is completed.
7. Soft Elements does not warrant that the software shall operate without interruption, errors or other defects or that all errors and other defects shall be corrected. Repairs shall be performed free of charge, unless the software has been developed at the customer's instruction other than for a set price, in which case Soft Elements shall charge the repair costs according to its usual rates. Soft Elements may charge the repair costs according to its usual rates if there have been operating errors or improper use on the customer's part or other causes not imputable to Soft Elements or if the errors could have been ascertained when the agreed acceptance test was conducted. The guarantee shall not include fixing mutilated or lost data. The guarantee obligation shall be extinguished if the customer makes changes or has changes made to the software without Soft Elements' written permission, which permission shall not be withheld on unreasonable grounds.
8. Soft Elements is not liable in case Soft Elements' software provably influences or causes changes to databanks, file formats, applications, connections or other matters. On request Soft Elements

does deliver a report and / or advice in this case. If Soft Elements is asked to find a solution to the matter, this will take place according to the usual rates.

9. Errors shall be fixed at a location to be determined by Soft Elements. Soft Elements shall be entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the software.
10. Soft Elements shall not have any obligations concerning fixing errors reported after the expiry of the guarantee period, unless the parties have concluded a maintenance agreement, which includes such a duty to fix.
11. If a maintenance agreement has been concluded for the software or if the user's fee for the software includes maintenance, the customer shall provide detailed notice to Soft Elements of the errors observed in the software in accordance with Soft Elements' usual procedures.
12. If and insofar as Soft Elements provides software from third parties to the customer, those third parties' terms and conditions shall replace the provisions in these terms and conditions and shall apply with regard to that software, provided that Soft Elements notifies the customer in writing. The customer shall accept the aforementioned third-party terms and conditions. These terms and conditions shall be available for the customer's inspection at Soft Elements' and Soft Elements shall send these terms and conditions free of charge to the customer at its request. If and insofar as the aforementioned third party terms and conditions are deemed or declared inapplicable to the relationship between the customer and Soft Elements for whatever reason, the provisions in these general terms and conditions shall fully apply.

Article 20 Security and passwords

1. At all times, Soft Elements shall use commercially reasonable endeavors to keep Customer's data protected. Customer entitles Soft Elements to backup their data, but Soft Elements cannot be required to backup Customer's data and cannot be held accountable for any lost data.
2. Soft Elements retains the right to maintain the service at a reputable third party Internet service provider and/or hosting facility, where they are subject to commercially reasonable security precautions to prevent unauthorized access to the service. Soft Elements is not liable for any damage resulting from such unauthorized access.
3. Customer acknowledges that, notwithstanding such security precautions, use of or connection to the Internet provides the theoretical opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to the service and/or customer's data.
4. At all times, customer's data will be transmitted using encryption technology.
5. At all times, Soft Elements shall use commercially reasonable endeavors to secure and safeguard all the important (data) connections. In this respect, (data) connections will at least use the HTTPS-standard. This standard maintains a high level of security, but security breaches can theoretically be possible in, for example, the following situations:
 - human error(s) in configuring the HTTPS-connection,
 - if one of the end points is compromised (e.g. keylogger or when Customer is rooted),
 - the party issuing HTTPS-certificates (the Certificate Authority) suffers a security breach (e.g. hacking).
6. Despite the use of highly secure data (connections), Soft Elements cannot and does not guarantee the privacy, security, or authenticity of any information so transmitted over the Internet.
7. Customer shall have the option to choose a login name and/or password for each authorized registration. This login data is strictly personal and shall not be forwarded to anyone else. Soft Elements does not know and is not able to retrieve customer's password. Soft Elements is not responsible nor liable for the safekeeping of customer's password(s) and/or login information.
8. Customer agrees to immediately notify Soft Elements of any unauthorized use of his Registration or any other breach of security.
9. Customer is entirely responsible for any and all activities that occur during his Registration.
10. Soft Elements is not responsible or liable for any lost login data, or for any loss or damage arising from Customer's failure to comply with these requirements.

Article 20 Confidential information

1. Each of the parties warrants that all of the information received by the other party, which is known to be, or should be known to be, confidential in nature, shall remain secret, unless a legal obligation mandates disclosure of that information. The party receiving the confidential information shall only use it for the purpose for which it has been provided. Information shall in any event be considered confidential if it is designated by either of the parties as such.
2. If Soft Elements is forced to publish confidential information, Soft Elements is not obliged to pay compensation for damages and the customer is not entitled to annul the contract.
3. Personal information, provided documents, data and audiovisual information of the customer remain confidential. Soft Elements does not supply personal information to third parties without prior consent of the customer.

Article 21 Applicable law and disputes

1. In case of any dispute between Soft Elements and the customer, the district court of Middelburg will be the single competent court, unless another court has jurisdiction.
2. Soft Elements retains the right to bring the dispute before a court in the place where the customer usually takes residence, at least in the applicable court according to the law.
3. Dutch law shall be applicable concerning any agreement between Soft Elements and the customer.