

## CBOOST GENERAL TERMS AND CONDITIONS

### 1 DEFINITIONS

1.1 For the purposes of these Terms and Conditions and all related documents, the capitalized terms defined below shall have the following meaning, whereby these terms may be used in either the singular or plural and vice versa, as the context requires:

**Agreement:** all agreements between the Customer and Cboost concerning the sale and supply of Products, Software and/or Services;

**Background IP:** all (technical) data, designs, drawings, know-how, Intellectual Property Rights, software materials and other information (regardless of the form or medium in which they are disclosed or stored) that was already in the possession or lawfully available to a Party prior to a Quotation or an Agreement;

**Cboost:** C-Boost B.V., having its principal place of business in (5651 GW) Eindhoven at the Achtseweg Zuid 221, registered in the Trade Register of the Chamber of Commerce under number 75781824 as well as group companies affiliated with Cboost within the meaning of Section 2:24 b of the Dutch Civil Code;

**Clause:** the clauses in these Terms and Conditions;

**Customer:** the (legal) person or entity that has requested a Quotation and/or has entered into or (negotiations for) an Agreement with Cboost;

**Data:** all (technical) data and information of whatever nature and in whatever form and whether or not protected by Intellectual Property Rights, that is provided by the Client for use of the Products, Software and/or Services, such as but not limited to, photographic images.

**Foreground IP:** all (technical) data, designs, drawings, know-how, Intellectual Property Rights, software, materials and other information (regardless of the form or medium in which it is disclosed or stored) relating to the Products, Software and Services other than the Background IP of the Customer;

**Intellectual Property Rights:** all worldwide copyrights, design rights, trademarks and trade names, patents, patent applications, and equivalents thereof, know-how, trade secrets and confidential information, moral rights, goodwill and all other intellectual property rights as they now exist and/or will arise in the future, including all registrations and applications of the foregoing;

**Purchase Order:** a purchase order issued by the Customer for the purchase of Products and/or Services, pursuant to which Cboost is required to provide Products and/or Services to the Customer;

**Party:** the Customer and Cboost separately;

**Parties:** the Customer and Cboost together;

**Products:** the products, including Software that is embedded in the Products, equipment and related items that Cboost sells and/or provides to the Customer subject to the Agreement;

**Quotation:** any offer relating to the sale and/or supply of Products and/or Services made by Cboost to the Customer;

**Services:** all services, including, but not limited to, (Software and product) design, consultancy, engineering, maintenance, manufacturing and operating services that Cboost will perform under the Agreement;

**Software:** the software developed and/or licensed by Cboost, including any associated documentation and/or materials, which is provided in conjunction with or embodied in a Product or as an application;

**Specifications:** the detailed specifications, descriptions and drawings of Products, including Software, and/or Services agreed between the Parties and specified and described as such in writing;

**Terms and Conditions:** these General Terms and Conditions of Cboost.

1.2 Headings in these Terms and Conditions are for convenience of reference only and are not intended to indicate the meaning of any Clause or part thereof.

1.3 References to words designating a gender include all genders.

1.4 Legal terms and expressions as used in these Terms and Conditions have the meaning ascribed to them under Dutch law and are to be read and interpreted accordingly.

### PART A: GENERAL PROVISIONS

#### 2 APPLICABILITY

2.1 These Terms and Conditions are used by Cboost. The Terms and Conditions have been filed with the Chamber of Commerce under number 75781824. You can also download the Terms and Conditions on the website [www.cboost.nl](http://www.cboost.nl). The Terms and Conditions will also be sent free of charge upon request.

2.2 These Terms and Conditions apply to all Quotations as well as to all Purchase Orders and Agreements and the legal consequences arising from the above, unless the Parties expressly agree otherwise.

2.3 The applicability of (purchase) terms and conditions of the Customer is expressly excluded.

2.4 Nullity or nullification of one or more Clauses of the Terms and Conditions and/or an Agreement shall not affect the applicability of the remaining Clauses of the Terms and Conditions and/or the Agreement concerned.

Cboost and the Customer shall enter into consultations to replace the void or annulled Clause, taking into account as far as possible the purpose and purport of the void or annulled provision.

2.5 Cboost is entitled to amend these Terms and Conditions at any time. The most recent version of the Terms and Conditions shall always apply after it has been communicated to the Customer.

### **3 OFFER, AGREEMENT AND NOTICES**

3.1 All Quotations of Cboost are entirely without obligation and non-binding, unless expressly stated otherwise.

3.2 All Quotations remain valid for a period of 30 (thirty) days, unless expressly stated otherwise.

3.3 The Customer warrants the accuracy and completeness of the information on which Cboost bases its Quotations and Agreements.

3.4 Cboost cannot reasonably be held to obvious mistakes and/or clerical errors in Quotations and Agreements.

3.5 If an offer has been made by Cboost by submitting a Quotation, an Agreement between Cboost and the Customer shall only come into effect by acceptance of Cboost's Quotation by the Customer or in the event Cboost has started to perform and/or Cboost has received payment (in advance).

3.6 If a Purchase Order is placed with Cboost by the Customer, an Agreement between Cboost and the Customer shall only be formed by acceptance of Cboost by means of an order confirmation or by execution of the Agreement by Cboost. Only written acceptance by Cboost shall be deemed to accurately reflect the substance of the Agreement, unless otherwise stated by Cboost.

3.7 Cboost is entitled at any point in time to refuse a Purchase Order without being in any way liable for any damage, for instance if Cboost has an indication or suspicion that the Customer will not comply with its payment obligations and/or if the Products and/or Services are not available to provide to the Customer.

3.8 The Customer cannot derive any rights from verbal promises made by Cboost unless and to the extent that they have been confirmed by Cboost in writing.

### **4 PERFORMANCE**

4.1 Cboost shall use its best efforts to perform the Agreement with due care, where appropriate in accordance with the arrangements and procedures recorded in writing with the Customer. All activities of Cboost are performed on the basis of an obligation of best efforts, unless a result has expressly been recorded in the Agreement and it is clearly written down that this obligation is not an obligation of best efforts.

4.2 If the Agreement was entered into with a view of performance by one specific person, Cboost is always entitled to replace this person by one or more persons with the same and/or similar qualifications.

4.3 Cboost is not obliged to follow any instructions of the Customer in the performance of the Agreement, in particular if these instructions change or supplement the content or scope of what the Parties have agreed. However, if such instructions are followed, the work in question shall be remunerated in accordance with Cboost's usual rates.

4.4 Cboost is always entitled to engage third parties for the performance of the Agreement.

4.5 In the event Cboost has audit and/or reporting obligations in respect of obtained subsidies or any other funds, the Client is obliged to cooperate with Cboost and to provide Cboost all required information and grant access any location necessary for compliance with such obligations. If the Customer does not cooperate, Cboost is entitled to suspend performance of its obligations toward the Customer without being liable for any damages.

### **5 DELIVERY TERMS**

5.1 Cboost makes reasonable efforts to comply as much as possible with the (delivery) periods and/or (completion) dates stated by or agreed upon between the Parties. All delivery dates stated by Cboost or agreed upon between the Parties are indicative and estimated dates which do not bind Cboost.

5.2 Failure to meet delivery deadlines as a result of delayed or fully delayed delivery by Cboost's suppliers or third parties engaged by Cboost shall never constitute a failure on the part of Cboost.

5.3 If an overrun of any term is imminent, Cboost and the Customer shall consult to discuss the consequences of the overrun for further scheduling.

5.4 If it is agreed that performance of the Agreement will take place in phases, Cboost is entitled to postpone the commencement of the work belonging to another phase until the Customer has approved the results of the preceding phase.

5.5 Cboost is not bound by any deadline (delivery) date or (delivery) period, whether or not final, if the Parties have agreed on a change in the substance or scope of the Agreement (additional work, change in Specifications, etc.) or a change in the approach to the performance of the Agreement, or if the Customer fails to perform its obligations under the Agreement or fails to do so on time or in full. The fact that (the demand for) additional work arises during the performance of the Agreement shall never be a ground for the Customer to terminate or dissolve the Agreement.

**6 TERM AND TERMINATION**

6.1 All Agreements are entered into for an indefinite period of time, unless the Agreement relates to the fulfilment of a specific project or a fixed term is recorded in the Agreement. Cboost is always entitled to terminate an Agreement early, without being liable for any costs and damages, taking into account a notice period of 1 (one) month, also in the event of a specific project or a fixed term has been agreed upon. The Customer is not entitled to terminate an Agreement regarding a specific project or a fixed term early, unless Cboost agrees to such early termination.

6.2 Without prejudice to the before mentioned in Clause 6.1 and its statutory rights, Cboost has the right to terminate the Agreement in whole or in part with immediate effect without prior written notice of default and/or to suspend the performance of the Agreement in whole or in part with immediate effect if one or more of the following events occurs or occur:

- a) there is a default attributable to the Customer in the performance of one or more obligations under the Agreement and the Customer has not remedied the default within 14 (fourteen) days after Cboost has notified the Customer in writing of a default, notwithstanding Cboost's other rights by law;
- b) The Customer has applied for or intends to apply for a moratorium and/or there is an (imminent) bankruptcy of the Customer;
- c) The Customer can no longer freely dispose of (liquid) assets for example due to seizure;
- d) The Customer is dissolved or has the intention to dissolve;
- e) a (part of) the Customer's ownership is transferred to a third party or a third party has acquired some control;
- f) the good name and reputation of Cboost is or threatens to be damaged by any act or omission on the part of the Customer;
- g) circumstances come to the knowledge of Cboost that give it good reason to fear that the Customer will not perform its obligations under the Agreement in time and/or in full; Suspension of the Agreement by Cboost is in that case only permitted to the extent that the shortcoming on the part of the Customer justifies such suspension;
- h) any other circumstances occur which are of such a nature that performance of Cboost's obligations is impossible or can no longer be required of it by standards of reasonableness and fairness;
- i) the Customer is in default without further notice of default being required subject to these Terms and Conditions and/or the Agreement.

6.3 If the Agreement is terminated pursuant to one of the provisions of Clause 6.2, the performance already received by the Customer in performance of the Agreement and the Customer's payment obligations in connection therewith shall not be subject to an obligation of undoing. The amounts invoiced by Cboost for Products, Software and/or Services already provided before or at the time of termination of the Agreement as well as the remaining agreed upon amounts for agreed upon Products, Software and/or Services that have not yet been performed shall be immediately due and payable after termination.

6.4 Cboost shall never owe the Customer any damages by reason of the termination of the Agreement and/or the suspension of obligations arising from the Agreement under the provisions of this Clause. Cboost always reserves the right to claim damages in the event of suspension or termination under the foregoing provisions of this Clause.

**7 PRICE AND PAYMENT**

7.1 The prices of Products, Software and/or Services are specified in Euro (€), unless otherwise agreed upon.

7.2 The price announced by Cboost is exclusive of turnover tax and other taxes and/or levies and exclusive of transport costs, packaging costs, insurance costs, as well as export and import duties, unless expressly agreed otherwise. These costs and levies are at the expense of the Customer.

7.3 No rights can be derived by others than the Customer from an offer, prices and tariffs made known to the Customer.

7.4 Cboost reserves the right at all times to adjust the prices of Products, Software and/or Services (in the interim or otherwise), for instance but not exclusively as a result of increases in purchase prices, storage costs charged to Cboost by suppliers, raw material prices, labor costs, currency exchange rate changes, changes in transport and/or shipping costs and other cost-increasing factors. Cboost is also entitled to do so after the conclusion of the Agreement and even if it has been agreed that the price will be fixed. Cboost shall inform the Customer of this without delay. An adjustment such as this does not otherwise affect the Agreement.

7.5 Payments shall be made, without suspension, discount or set-off on any account whatsoever, within the term specified by Cboost, failing which the Customer shall be in default by operation of law and therefore without further notice of default being required. If the Customer fails to comply with its payment obligation, the Customer shall immediately be in default, and interest of 1.25% per month shall be due on the outstanding amount, without any demand or notice of default being required.

- 7.6 Cboost is entitled at all times, irrespective of any payment arrangements made previously, to demand full or partial payment or substitute security for the delivery of Products and/or Services at a time and in a manner of Cboost's discretion, as well as to suspend all its obligations under the Agreement until it has received payment or substitute security, without owing the Customer any compensation in this regard.
- 7.7 Cboost is entitled to apply payments first against the (extrajudicial) costs, then against the interest due and then against the principal sum.
- 7.8 Any objections to invoices must be notified to Cboost in writing within ten (10) days of receipt under penalty of forfeiture. If this is not possible due to any cause not attributable to the Customer, the Customer shall in any event notify Cboost in writing of its objections within ten (10) days after such cause has ceased to exist and/or has been remedied and/or is known. Contestation of invoices, specifications, descriptions and the agreed price shall not suspend the fulfilment of the Customer's payment obligations.
- 7.9 In the event Cboost has to take legal action against the Customer due to the fact that the Customer has not met its (payment) obligations, the Customer is due all legal costs made by Cboost, including all attorney's fees.
- 8 ADDITIONAL WORK AND MODIFICATIONS**
- 8.1 If, at the request or with the prior consent of the Customer, Cboost has performed work or other performance that falls outside the content or scope of the Agreement, such work or performance shall be remunerated by the Customer in accordance with the agreed rates and, in the absence thereof, in accordance with Cboost's customary rates. Cboost is not obliged to comply with such a request and may require that a separate written agreement be concluded for work or other performance that falls outside the content or scope of the Agreement.
- 8.2 Modifications and additional work (may) result in the postponement of (delivery) periods and (completion) dates without Cboost being in default towards the Customer. New (delivery) periods and (completion) dates specified by the Customer replace the earlier ones.
- 8.3 To the extent that a fixed price has been agreed for the Agreement, Cboost shall, upon request, inform the Customer in writing of the financial consequences of the work to be performed by Cboost or other performance that falls outside the content or scope of the Agreement.
- 9 LIABILITY**
- 9.1 Liability of Cboost may arise only after the Customer has given Cboost proper notice of default by registered post without delay, but no later than 7 (seven) days after delivery or, in the event of a failure not observable at the time of delivery, without delay, but no later than 30 (thirty) days after the discovery of the failure, and has given Cboost the opportunity to remedy the failure for a reasonable period of time. This period is in deviation from the time limits and limitation periods set out in Sections 7:761 of the Dutch Civil Code and Section 7:23 of the Dutch Civil Code.
- 9.2 An obligation of Cboost to pay damages shall at all times be limited to direct damage and to a maximum of the amount invoiced by Cboost to the Customer over the last 6 (six) months prior to the loss-causing event with a maximum amount at all times of € 250.000,- (two hundred and fifty thousand euro). Cboost shall under no circumstances be liable for any immaterial and indirect damage, such as consequential damage, trading loss, damage to image, environmental damage and damage due to loss of time, loss of savings, loss of data and/or loss of financial benefit.
- 9.3 The Customer shall indemnify Cboost against claims by third parties, such as its employees and other auxiliary persons, arising from and/or relating to Products, Software and/or Services provided by Cboost pursuant to and/or under the Agreement. The Customer shall indemnify Cboost against third party claims based on product liability for Products, Software and/or Services delivered by the Customer to third parties that contain Products delivered by Cboost to the Customer, unless the liability is caused solely by Products delivered by Cboost.
- 9.4 Cboost shall never be liable for the conduct of auxiliary persons, use of (unsuitable) auxiliary equipment, use of third party software, shortcomings due to the conduct of other suppliers of the Customer and shortcomings arising from unsecured (electronic) transmission of statements and data.
- 9.5 The damage limitation Clauses do not apply in the event of intent or willful recklessness on the part of Cboost.
- 9.6 Legal claims and defenses on behalf of the Customer against Cboost based on facts that would justify the assertion that the Product, Software and/or Services delivered, lapse by operation of law within 1 (one) year after such facts have been discovered or could have been discovered.
- 10 INTELLECTUAL PROPERTY RIGHTS AND DATA**
- 10.1 Unless expressly agreed otherwise in writing, ownership of Intellectual Property Rights shall be divided between the Parties as provided for in this Clause 10.
- 10.2 The Background IP shall remain the property of each Party. Each Party grants the other Party a non-exclusive, worldwide, royalty-free license to use its Background IP to the extent strictly necessary for the performance of the Agreement.

- 10.3 The Foreground IP is the property of Cboost. Cboost grants the Customer during the term of the Agreement, and in the case of a specific Product during its lifetime, a non-exclusive, worldwide, non-transferable and non-sublicensable license to use the Foreground IP, Software, Products and Services, solely for the purposes of the performance of the Agreement and the Customer's use of the Software, Product and/or Services. Nothing in these Terms and Conditions, Quotations and/or Agreements can be considered a transfer of Foreground IP to the Customer, unless otherwise expressly stated in Quotations and/or Agreements. In the event of any transfer of Foreground IP to the Customer, Cboost always remains entitled to use such Foreground IP for its own purposes and business.
- 10.4 Any license provided by Cboost to the Customer is strictly limited to the use of Products, Software and/or Services within the scope of the Agreement and does not entitle the Customer to obtain any (source)codes, data, documents or any other information that Cboost uses for Products, Software and Services. The Customer is not entitled to use the Products, Software and/or Services for military purposes or similar purposes that could be harmful to Cboost in any way. To this extent, the Customer indemnifies and holds Cboost harmless for all (third-party) claims, costs and damages, including all legal costs.
- 10.5 The Customer shall not remove or obscure, in whole or in part, any trademark and/or identifying marks affixed to Products or their packaging.
- 10.6 Without Cboost's prior written consent, the Customer is not permitted to use any Intellectual Property Rights, including trade names, of Cboost as part of its business operations, trade and/or brand names and/or domain names.
- 10.7 Except for the rights acquired under these Terms and Conditions and/or the Agreement, the Customer shall not at any time claim any Intellectual Property Rights or other right in relation to Cboost, Products, Software and/or Services and shall not, without Cboost's prior written consent, make any registration or other action anywhere in the world in respect of (the name of) Cboost, Products, Software and/or Services.
- 10.8 If the Customer discovers any infringement of Cboost's Intellectual Property Rights by a third party, it shall notify Cboost immediately. Cboost may then decide whether or not to take action against any infringement or threatened infringement. In that event, the Customer is obliged to provide all the cooperation that can reasonably be expected of it. Without Cboost's prior written consent, the Customer is not permitted to take any action against a breach either in or out of court.
- 10.9 In the event Cboost uses Background IP of the Customer for the development and delivery of Products, Software and/or Services, the Customer guarantees that these do

not infringe any Intellectual Property Rights or other (property) rights of third parties. The Customer shall indemnify Cboost and hold Cboost fully harmless against all claims of third parties resulting from any infringement of the said (property) rights. The purchaser will compensate Cboost for all damages and costs, including all legal costs, which may result from this.

- 10.10 The Customer is owner of the Data. The Customer grants Cboost a (royalty) free non-exclusive, worldwide, perpetual, irrevocable, transferable and sublicensable license to use the Data for the development and improvement of the Products, Software and Services, including all related protocols, standards and algorithms, for itself and third parties, which license is accepted by Cboost.

## 11 PERSONAL DATA

- 11.1 The Parties undertake to comply at all times with all obligations under Dutch data protection legislation and all other relevant (national, European and international) data protection regulations, expressly including the General Data Protection Regulation (GDPR), applicable to the performance of the Agreement. If required under applicable privacy legislation, the Parties will enter into a processor agreement.
- 11.2 The Parties will (i) take appropriate security measures to protect the confidentiality of the (personal) data provided by the other Party, (ii) inform the other Party at its request about the security measures taken in relation to the foregoing, and (iii) notify the other Party of any personal data breach in accordance with and within the timeframe specified in the applicable privacy legislation.
- 11.3 The Customer shall indemnify Cboost against any claims by third parties based on the assertion that data processed by Cboost on behalf of the Customer violates any applicable rights, such as, inter alia, the AVG and/or rights arising therefrom.

## 12 CONFIDENTIALITY

- 12.1 Confidential information is any data or information of the disclosing Party that is not generally known to the public or has not yet been disclosed, whether in tangible or intangible form, regardless of when and how it is disclosed, including, but not limited to:
- a) any concepts, samples, reports, data, know-how, works in progress, designs, drawings, photographs, videos, development tools, specifications, software programs, source codes, object codes, flow charts and databases;
  - b) results of tests performed during the Agreement (including the nature and methodology) any scientific or technical information, inventions, designs, processes, procedures, formulas, improvements, technologies or methods;



- c) marketing strategies, plans, financial information or forecasts, activities, sales estimates, business plans and performance results relating to the disclosing Party's past, present or future business activities;
- d) trade secrets, plans for products or services, and lists of customers or suppliers;
- e) any other information that should reasonably be recognized by the disclosing Party as confidential information; and
- f) in all cases a - e, whether or not such confidential information is protected or protectable as registered or unregistered Intellectual Property Rights under any national or international intellectual property law;
- 12.2 The Parties shall, both during the term of the Agreement and after its termination, maintain the confidentiality of all each other's confidential information and shall only use it for the purposes of the performance of the Agreement.
- 12.3 A Party may authorize the other Party to disclose confidential information to its legal, financial and other business advisers as well as third parties involved in the performance of this Agreement (in each case to the extent such advisers and third parties need to know such confidential information) or as may be required by law or by any regulatory authority.
- 12.4 Clause 12.1 shall not apply to confidential information which:
- a) was already in the possession of a Party before such Party received it from the other Party without an obligation of confidentiality; or
- b) was lawfully disclosed to a Party without an obligation of confidentiality by a third party who did not obtain such confidential information (directly or indirectly) from a Party; or
- c) was in the public domain at the time of receipt by a Party or subsequently entered the public domain other than as a result of a breach of Clause 12.1 by a Party.
- 12.5 Upon termination of the Agreement for any reason, each Party that has received confidential information from the other Party in a tangible form or on a tangible medium of such information shall promptly return such confidential information to the other Party.
- 13 FORCE MAJEURE (FORCE MAJEURE)**
- 13.1 Cboost shall not be obliged to perform its obligations under the Agreement if it is unable to perform them due to force majeure. Force majeure includes, but is not limited to natural phenomena, obligations imposed by government or by persons claiming to act within that framework, legislation, war, pandemics and epidemics, civil disturbances, fire, drought, power failure, explosion, riot, failure or stoppage of essential production equipment, flood, earthquake, lockout, transportation problems, (third party) data leaks, hacks and malicious code injection, shortage of essential raw materials strike or other action taken by employees with a view to or in furtherance of a trade dispute or as a result of an obligation to procure materials or force majeure of any other nature, including non-delivery or non-timely delivery as a result of non-delivery or non-timely performance of obligations of Cboost's subcontractors or carriers engaged by Cboost and/or solvency and/or liquidity problems and/or bankruptcy of third parties engaged by Cboost, to the extent that any of these circumstances prevents Cboost's performance of the Agreement.
- 13.2 Cboost shall notify the Customer of all circumstances and particulars which prevent Cboost from performing its obligations under the Agreement. Cboost shall consult with the Customer on the measures to be taken to minimise the effects of the force majeure event and to secure performance of the Agreement as far as possible.
- 13.3 Cboost shall make reasonable efforts to remedy a force majeure event as far as reasonably possible. Cboost may, at its option, suspend the performance of the obligation affected by force majeure during the period that such force majeure continues, without being liable on this account for any damage suffered by the Customer.
- 13.4 If the force majeure event continues for a period of more than 3 (three) consecutive months, either Party shall be entitled to terminate the Agreement by written notice to the other Party.
- 14 ASSIGNMENT**
- 14.1 The Customer is not entitled to assign any right arising from the Agreement to third parties without Cboost's prior written consent. The restriction on transferability has, in addition to the effect of the law of obligations, also the effect of property law as referred to in Section 3:83(2) of the Dutch Civil Code. The Customer gives Cboost the right in advance to transfer the rights arising from the Agreement in whole or in part to third parties.
- 15 APPLICABLE LAW AND DISPUTES**
- 15.1 These Terms and Conditions, offers, Quotations and Agreements shall be governed exclusively by Dutch law. The applicability of the Vienna Sales Convention (CISG) is expressly excluded.
- 15.2 All disputes which may arise in connection with these Terms and Conditions, offers, Quotations and/or Agreement or as a result of (legal) acts and agreements which may be the result thereof, shall be submitted exclusively to the District Court of Oost-Brabant, location 's-Hertogenbosch, except in so far as

mandatory rules of jurisdiction would prevent this choice of forum.

**PART B: SUPPLEMENTARY PROVISIONS REGARDING THE DELIVERY OF PRODUCTS**

The provisions of Part B shall apply in addition to the provisions of Part A if Cboost delivers Products to the Customer. In the event of any conflict between the provisions of this Part B and the provisions of the other Parts, the provisions of this Part B shall prevail with respect to Products.

**16 DELIVERY OF PRODUCTS**

16.1 All Products shall be delivered to the Customer Ex Works (Ex Works, Incoterms 2020 or any later version thereof) on the delivery date set out in the Agreement or within the delivery period set out therein from the location where Cboost is located or designated by Cboost.

16.2 If the Customer is unwilling or unable to accept the delivery, the Customer shall be in default immediately and without any written notice of default being required. Cboost may then, at its option: (i) store Products at the expense and risk of the Customer or (ii) sell Products at the best reasonably obtainable price (after deduction of reasonable storage, insurance and selling expenses), whereupon the Customer shall only recover the difference between the price obtained and the amount paid by it to Cboost, (iii) offer Products again for delivery, in which case the additional costs shall be borne by the Customer, or (iv) terminate the Agreement, without prejudice to Cboost's right to claim compensation for damages suffered by it. Any costs incurred will be charged to the Customer in excess of agreed upon budgets or amounts.

16.3 The delivery period commences as soon as Cboost has received from the Customer all data required for delivery and all other conditions necessary for the performance of the Agreement have been met.

16.4 Cboost is entitled to make partial deliveries at all times.

16.5 The Customer is obliged to provide the cooperation necessary and required by or on behalf of Cboost for the immediate performance of the delivery, including taking delivery of Products.

**17 ACCEPTANCE**

17.1 If the Parties have not agreed on an acceptance test, the Customer accepts Products in the condition they are in upon delivery with all visible and invisible faults and defects, without prejudice to Cboost's obligations under the warranty set out in this Part B. In the aforementioned case, Products shall be deemed to have been accepted by the Customer upon delivery or, if installation to be carried out by Cboost has been agreed in writing, upon completion of the installation.

17.2 If the performance of the acceptance test reveals that the Products do not comply with the Specifications, the Customer shall inform Cboost of the alleged defects immediately after the test period by means of a written test report. If Cboost determines that a defect exists, Cboost shall remedy the reported defects within a reasonable period of time. If an acceptance test is carried out again after the reported defects have been remedied, such test shall be limited to an examination of the reported defects.

17.3 If the acceptance test has been performed successfully, Products shall be deemed to have been accepted by the Customer.

**18 RETENTION OF TITLE**

18.1 Title to Products, Software and Intellectual Property Rights (in the event of an agreed upon transfer of Intellectual Property Rights), including any (electronic) files and so on, remain fully vested in Cboost until the Customer has paid in full all of Cboost's claims on the Customer, including those within the meaning of Section 3:92(2) of the Dutch Civil Code.

18.2 The Customer is not entitled to sell, rent, alienate, pledge or in any way encumber or grant use of the Products delivered under retention of title until full ownership of Products has passed to the Customer.

18.3 Until the moment of transfer of ownership, the Customer shall be obliged to take all reasonably possible measures to protect Products against damage. If third parties seize or threaten to seize Products delivered under retention of title, or wish to create or enforce rights in respect of Products, the Customer is obliged to inform Cboost thereof immediately.

18.4 If Cboost wishes to exercise its proprietary rights referred to in this Clause, the Customer hereby gives Cboost or any third parties designated by Cboost its unconditional and irrevocable permission to enter all those places where Cboost's property is located and to take back Products concerned.

**19 CERTIFICATION AND AUTHORISATION**

19.1 The delivery of Products may be subject to laws, customs and export control regulations. Unless otherwise agreed, the Customer shall be responsible for all necessary certifications, permits, licenses and other obligations and/or (legal) acts to trade Products in any territory.

19.2 Each Party shall provide the other Party with such information and assistance as may reasonably be required by the other Party in connection with obtaining such permits or licenses, and take timely action to obtain all required supporting documents. Cboost shall have the right to terminate the Agreement or any part thereof if the respective required approval(s) under the

applicable export regulations cannot be obtained within a reasonable time.

- b) return the defective Product or parts thereof for repair;
- c) replace the defective Product;
- d) replace the defective parts of the Product to enable the Customer to make the necessary repairs at Cboost's expense and direction; or
- e) credit the relevant part of the invoice related to the Product accordingly.

## **20 WARRANTY**

20.1 Cboost warrants that Products are delivered in accordance with the Specifications. In all cases, the warranty period commences upon delivery of Products ends after a period of 12 (twelve) months from the date of delivery.

20.2 The warranty described in Clause 20.1 shall apply to defects arising under the conditions of use provided for in the Agreement and, in particular, shall not apply to/if:

- a) Products which have been modified or repaired by anyone other than Cboost without Cboost's prior written consent;
- b) Products damaged by circumstances beyond Cboost's reasonable control;
- c) Products that have been improperly used or maintained by the Customer;
- d) Products that have been subjected to conditions of use and/or maintenance that are not in accordance with Cboost's instructions;
- e) Products damaged by negligence or lack of caution on the part of the Customer, by misuse, improper installation or application, or negligence in use, improper storage, transportation or handling, or Products damaged in any other way;
- f) a part is purchased by Cboost as part of Products, except to the extent that such part or parts are covered by the original manufacturer's warranty, if any; however, the warranty for a part does not extend beyond the warranty period set out in Clause 20.1;
- g) an item forming part of Products has been delivered to Cboost by the Customer;
- h) defects which only marginally reduce the value or suitability of the Products; a marginal defect exists in particular if the defect can be removed by the Customer himself without significant effort;
- i) normal wear and tear of the Products.

20.3 If the Customer believes that Products are defective and the warranty period referred to in Section 20.1 above has not expired, it shall, on pain of forfeiting all warranty claims, notify Cboost of all details within 7 (seven) days of discovering the alleged defect. However, the Customer may only claim this warranty if it has complied with all its obligations under the Agreement to Cboost.

20.4 If Cboost determines that Products are indeed defective, Cboost shall, at its option:

- a) repair the defective Product on-site;

20.5 Cboost shall be entitled at any time to inspect the Product alleged to be defective and to determine the cause of the alleged defect. In all cases, the Customer shall enable Cboost to remedy any defect. The remedies referred to in Clause 20.4 shall be at the sole discretion of Cboost.

20.6 The warranty provisions set out in this Section 21 supersede all other warranties, whether statutory, express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose or against infringement, all of which are hereby expressly disclaimed. Customer acknowledges that the remedies provided herein are exclusive and in lieu of all other warranties. The Customer accepts full responsibility for the use and application of the Products and accepts Cboost's choice of design and materials when placing its Purchase Order or signing the Quotation. The Customer further acknowledges that Cboost cannot guarantee that the objectives desired by the Customer will be achieved through the use of Products.

## **21 INSPECTION AND COMPLAINTS**

21.1 The Customer is obliged to inspect or arrange for inspection of Products after delivery thereof. Visible defects in Products and with respect to the quantity of Products must be notified to Cboost in writing within 48 (forty-eight) hours after delivery of the Products at the risk of forfeiting all rights. Non-visible defects should be reported to Cboost in writing within 48 (forty-eight) hours of their discovery but in any event within 7 (seven) days from the date of delivery at the risk of forfeiting all rights. Such written complaint shall include an accurate description of the defect and detailed delivery information of Products, such as delivery date and time and delivery number.

21.2 Complaints relating to delivered Products shall not release the Customer from its payment obligations.

21.3 If a delivery of Products contains negligible defects, the Customer shall accept such delivery.

21.4 If the Customer wishes to return defective Products, it shall do so with Cboost's prior written consent.

## **PART C: ADDITIONAL PROVISIONS IN RESPECT OF SOFTWARE**



The provisions of this Part apply in addition to the provisions of Part A and Part B if Cboost makes Software available to the Customer, provided in conjunction with, or embodied in a Product. In the event of any conflict between the provisions of this Part C and the provisions of the other Parts, the provisions of this Part C shall prevail with respect to Software.

## **22 USE AND USE RESTRICTIONS**

- 22.1 Cboost shall make Software available to the Customer for use for the duration specified in the Agreement on the basis of a user license referred to in Clause 10.
- 22.2 Unless otherwise agreed in writing, Cboost's obligation to make available and the Customer's right of use do not extend to the object code and the source code (including the technical documentation created in the development of Software) of Software.
- 22.3 Cboost is always entitled to take technical measures to protect Software against unlawful use and/or against use in a different manner or for different purposes than agreed between the Parties. The Customer shall never remove or circumvent any technical measures to protect Software or have them removed.
- 22.4 The Customer may only use Software for the purpose for which it is intended. The Customer shall not use the Software for third parties and it not entitled to resell the (license for) the Software without prior written approval by Cboost.
- 22.5 If requested, the Customer shall promptly cooperate with any investigation to be conducted by or on behalf of Cboost into compliance with the agreed restrictions on use of the Software.

## **23 DEVELOPMENT OF SOFTWARE**

- 23.1 If Cboost develops Software specifically for the Customer and the Parties make use of a development method based on the continuous design and/or development of Software or parts of Software, then the Parties accept that the work is not initially carried out on the basis of complete or elaborate Specifications and furthermore that Specifications, which may or may not have been agreed upon at the commencement of the work, may be changed during the performance of the Agreement in consultation and with due observance of the project approach that forms part of the development method in question. The Parties will decide in consultation during the execution of the Agreement which Specifications will apply in the next phase of the project and/or in the subsequent constituent development process. The Customer accepts the risk that Software does not necessarily comply with all Specifications. The Customer warrants promptness with regard to the progress decisions to be made during the performance of the Agreement. If the Customer fails to make clear progress decisions in a timely manner in accordance with the project approach forming part of

the relevant development method, Cboost shall be entitled, but not obliged, to take such decisions as it deems advisable.

- 23.2 The provisions of Clause 24.2 to Clause 24.5 do not apply if the Parties use the development method referred to in Clause 23.1. In that case, the Customer shall accept the Software in the state in which it is at the end of the final development phase. Cboost is not obliged to remedy errors after the final development phase, unless otherwise agreed in writing.

## **24 ACCEPTANCE**

- 24.1 If the Parties have not agreed on an acceptance test, the Customer shall accept the Software in the state it is in upon delivery with all visible and invisible errors and defects, without prejudice to Cboost's obligations under the warranty set out in this Part C. In the aforementioned case, Software is deemed to have been accepted by the Customer upon delivery or, if installation by Cboost has been agreed in writing, upon completion of the installation.
  - 24.2 If the Parties have agreed an acceptance test, the test period is 14 (fourteen) days after delivery of Software, or, if installation by Cboost is agreed in writing, 14 (fourteen) days after completion of the installation of Software. The Customer shall conduct the agreed acceptance test with qualified personnel and with sufficient scope and depth.
  - 24.3 If an acceptance test has been agreed, the Customer must examine whether the delivered Software meets the Specifications.
  - 24.4 If the performance of the agreed acceptance test reveals that Software contains errors, the Customer shall report the test results to Cboost in writing in the form of a test report no later than on the last day of the test period in a clear, detailed and comprehensible manner. Cboost shall use its best efforts to remedy the said errors within a reasonable period of time with the exclusion of errors in third-party software.
  - 24.5 The Customer may not refuse acceptance of Software for reasons unrelated to the agreed Specifications or due to the existence of minor errors, being errors that do not reasonably prevent operational or productive use of Software, all without prejudice to Cboost's obligation to remedy such errors under the warranty referred to in this Part C.
- ## **25 CHANGES TO THE SOFTWARE**
- 25.1 Subject to statutory exceptions, the Customer is not permitted to modify Software in whole or in part without Cboost's prior written consent. Cboost is entitled to refuse such permission or to attach conditions thereto. The Customer bears the full risk of all modifications made by himself or on behalf of third parties, with or without the consent of Cboost.

**26 WARRANTY FOR SOFTWARE**

26.1 Cboost shall use its best efforts to remedy errors in Software, with the exclusion of errors in third-party software, within a reasonable period of time if these are reported to Cboost in writing within a period of 1 (one) month after delivery, or, if an acceptance test was agreed, within 1 (one) month after acceptance, described in detail, failing which the right to remedy shall lapse.

**27 SOFTWARE AND THIRD PARTY LICENCES**

27.1 If and to the extent that Cboost makes third party Software available to the Customer, the license terms of the relevant third party shall apply in the relationship between Cboost and the Customer in respect of the Software. Cboost does not grant any rights beyond those granted by such third parties and shall not be liable for any errors in the third party software.

27.2 If and to the extent that, for whatever reason, the third party terms referred to in this Clause 27 are deemed not to apply or are declared inapplicable in the relationship between the Customer and Cboost, the provisions of these Terms and Conditions shall apply in full.