

# GENERAL TERMS AND CONDITIONS OF DELIVERY

The logo graphic consists of two overlapping, curved, teardrop-like shapes. The upper shape is red and the lower shape is blue. They are positioned to the left of the company name.

**Asperitas**  
IMMERSED COMPUTING

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# 1. ASPERITAS GENERAL TERMS AND CONDITIONS AS OF 01-01-2017

These general terms and conditions of delivery have been drawn up on behalf of Aecorsis BV acting through its tradename Asperitas.

## PART A: GENERAL PART

### 1. Definitions

- 1.1. Offer: Every Offer made by Asperitas to the Client.
- 1.2. Advice: Providing advice in a general sense, including in any event providing advice in the sphere of, carrying out feasibility studies, providing advice with respect to the Equipment to sold to the Client.
- 1.3. Equipment means the equipment listed in the Agreement as being subject to the sale from Asperitas to the Client against payment of the related prices.
- 1.4. GTCD2017: These general terms and conditions of delivery, consisting of PART A: GENERAL PART, PART B. REGARDING AGREEMENTS FOR THE SALE OF EQUIPMENT AND OTHER GOODS, PART C. REGARDING AGREEMENTS FOR CARRYING OUT ACTIVITIES AND CONTRACTING FOR WORK, PART D. REGARDING AGREEMENTS FOR CARRYING OUT MAINTENANCE OF EQUIPMENT, PART E: RENTAL OF EQUIPMENT.
- 1.5. Documentation: Any pamphlets, product information, factory drawings, instructions, test certificates, catalogues, price lists and folders supplied by Asperitas (if any), as well as all data supplied in or as part of an Offer and/or the compliance of the Agreement, such as for example but not limited to: designs, drawings/images, plans, descriptions, explanations, ideas, models, samples, tables, diagrams, calculations and all other information of a confidential nature.
- 1.6. Shortcoming: There is a Shortcoming if, based on the Agreement, the item/service supplied by Asperitas to the Client is not complete and/or does not comply with the specifications and/or does not possess the feature(s) that Asperitas explicitly confirmed with the Client in the Agreement.
- 1.7. Item/Service Supplied: The Item/Service Supplied by Asperitas based on the Agreement, including the (part of the) Work and/or the Activities that Asperitas supplied to or provided respectively to the Client on the basis of the Agreement.
- 1.8. Without Delay: As soon as reasonably possible yet no later than the next full two working days.
- 1.9. Order: The Activities agreed upon as well as the Work agreed upon and any other items/services to be supplied by Asperitas on the grounds of the Agreement.
- 1.10. Confirmation of the Order: The written notification from Asperitas to the Client containing a summary of the content of the Agreement. As a rule, the Confirmation of the Order describes the scope of the delivery agreed upon and the prices and terms and conditions agreed upon.
- 1.11. Client: The Party for whom the Offer made by Asperitas is intended, to whom Asperitas has supplied and/or with whom Asperitas has entered into an Agreement.
- 1.12. Agreement: The Agreement between the Client and Asperitas, including any change(s) that came about after the conclusion of the Agreement, and the contract extras and variations resulting in less work agreed upon.
- 1.13. Parties: Client and Asperitas.
- 1.14. Party: One of the Parties.
- 1.15. In Writing: Correspondence per telefax, registered letters, bailiff's notification or regular post. This also includes correspondence per electronic medium (such as e-mail or a web-form, for example) insofar as neither Party has demonstrably objected to the use of the electronic medium concerned.
- 1.16. Supplier: The Party from whom Asperitas purchases the goods that are offered.
- 1.17. Work: The item of a material nature or parts thereof that are to be realised by Asperitas for the Client in compliance with the Agreement, such as for example a piece of Equipment, machine, semi-finished product, structure, installation or some other item.
- 1.18. Activities: The Activities that Asperitas conducts for the Client in respect of the Agreement concerning the provision of services insofar as these do not concern the realisation of a Work for the Client. Consider in this respect for example conducting feasibility studies, providing Advice, developing, designing, building and supplying and/or designing of mechanical and electro-technical installations, conducting service and maintenance, assembly-,

disassembly-, installing, un-installing, linking- and unlinking-, building-in, erecting, dismantling-, demolition-, synchronisation-, calibration-, validation-, configuration-, adjusting- and setting work activities, putting into operation, testing, gauging, inspection, inventory, schooling, workshops, supervision, etc. The services supplied are often generally passed on per hour on the basis of subsequent calculation whenever it purely concerns the obligation to perform to the best of one's ability, i.e. reasonable efforts based services.

### 2. Applicability of the GTCD2017, titles and language

- 2.1. Applicability: These terms and conditions apply to every Offer, to every delivery on the part of Asperitas, to every Agreement between Asperitas and the Client and to every other legal relationship between the Client and Asperitas. Any deviations to these GTCD2017 will only be considered to be in force insofar as these have been explicitly confirmed In Writing to the Client by Asperitas.
- 2.2. Authorised Persons: Only the employees in the employment of Asperitas who are appropriately authorised according to the commercial register of the Chamber of Commerce are authorised to carry out acts intended to have legal effect on behalf of Asperitas. Any juristic acts concluded by persons other than the authorised persons to do so according to the commercial register cannot be invoked against the party on behalf of which the juristic acts were carried out unless Asperitas has affirmed these juristic acts In Writing. Juristic acts are understood to mean, among other things, making an Offer, guaranteeing certain characteristics of a product, making promises with respect to the delivery dates, making changes to previously concluded arrangements, concluding an agreement, etc.
- 2.3. Requirements digital communications: In the course of the duration of the legal relationship, Asperitas may opt to set requirements for the communication between the Parties or regarding the performance of juristic acts via digital media.
- 2.4. Titles of clauses: The titles and the articles of the GTCD2017 serve solely to simplify their interpretation and comprehension and have no other significance. In particular, the titles are not to be used further to the interpretation of the GTCD2017.
- 2.5. References: In those cases in which the GTCD2017 refer to article numbers, the article numbers concerned refer to the articles in the GTCD2017, unless it is evident from the text that the reference refers to an article or articles from some other document or source.
- 2.6. Proof of receipt: In the event that the recipient disputes having received certain correspondence In Writing, then the burden of proof that the recipient has received the correspondence concerned will lie with the sender. In the event that this concerns correspondence per electronic medium, then only the data concerning the sending and receiving as registered on the server(s) of Asperitas will serve as proof, except for convincing evidence to the contrary.
- 2.7. Mutual priority of clauses: Insofar as a clause in the parts B or C of the GTCD2017 applies to the Agreement concerned or to part of this Agreement, and a clause in part B or C is inconsistent with a clause in Part A, then the clause in part B or C will prevail over the clause in question in part A with which it is inconsistent.
- 2.8. Leniency: In the event that Asperitas does not appeal to any of the provisions in these GTCD2017 at any time and for any reason, then Asperitas will not be considered to have rejected the right to appeal to the provision(s) concerned at a later time.

### 3. The Offer and the execution of the Agreement

- 3.1. Free of obligation: All offers are free of obligation unless the Offer specifies a term of acceptance. Any Offer that is made free of obligation may be withdrawn Without Delay after having been accepted. No Agreement will be concluded in that case.
- 3.2. Offer and acceptance: The Agreement will be concluded further to an Offer In Writing and its approval subject to article 3.4 up to and including 3.7.
- 3.3. Sales via webshop: In deviation of the other provisions of this article, an Agreement further to an order via a webshop will not be concluded until the moment that the order is confirmed In Writing

- by the Client towards Asperitas by means of a Confirmation of the Order.
- 3.4. Modified acceptance: Insofar as the acceptance on the part of the Client of an Offer made by Asperitas deviates in any respect from the Offer, then the Agreement will not be finalised until Asperitas confirms the conclusion and the content of the Agreement In Writing by means of a Confirmation of the Order unless the Client objects to this Without Delay In Writing.
  - 3.5. Non-written acceptance: In the event that the Offer or its acceptance and/or the Offer and its acceptance did not take place In Writing, then the Agreement will not be concluded until Asperitas confirms the conclusion and the contents of the Agreement by means of a Confirmation of the Order, unless the Client objects to this Without Delay In Writing.
  - 3.6. No Agreement further to an objection: In the cases in which the Agreement is concluded on the grounds of article 3.4 or 3.5 at the time that the Client receives the Confirmation of the Order and the Client objects to this In Writing Without Delay, then no Agreement will be concluded.
  - 3.7. Agreement further to commencement of delivery: If the procedure as described in article 3.2, 3.4 or 3.5 is not observed for whatever reason, for example because the communications took place solely verbally, then the Agreement will be concluded anyway, however subject to the following. The Agreement will in such a case be concluded once Asperitas actually commences with the execution of the Agreement or orders a third party or parties to do so. In such event, the invoice will be deemed to specify the content of the Agreement completely and correctly, except in the event that proof to the contrary is provided by the Client.
  - 3.8. Attached information: Documentation provided by or on behalf of Asperitas will only bind Asperitas insofar as the Offer explicitly refers to data in this Documentation.
  - 3.9. Documentation in single copy: Asperitas will provide Documentation in single copy without additional charge insofar as agreed upon or insofar as relevant in the opinion of Asperitas. The Client will owe Asperitas a reasonable reimbursement of the costs for any additional copies of Documentation of this kind.
  - 3.10. Furnishing of security: The Client will provide Asperitas adequate securities at its own expense at the first request of Asperitas with respect to the timely compliance with its obligations further to the Agreement.
  - 3.11. Engaging third parties: Asperitas is authorised to engage third parties for the purpose of the execution of the Agreement as concluded between the Parties and to charge the costs involved to the Client in accordance with that Agreement.
- 4. Confidentiality**
- 4.1. Prohibition: The Client is prohibited to copy or reproduce Documentation or parts thereof in any shape or form, or to make such (or have others make such) known to third parties, to allow third parties the use of, to sell to third parties or to make available to third parties, without the permission In Writing of Asperitas.
  - 4.2. Right of use Documentation: The Client is only allowed to make use of Documentation insofar as this is necessary further to the execution or compliance with the Agreement. At the first request of Asperitas, as well as in the event that the Agreement is not concluded, ends prematurely or is cancelled, the Client is to immediately return all of the Documentation that it has received to Asperitas at its own expense.
  - 4.3. Limited circle of readers: The Client will only share the Documentation with its own employees within its own organisation and only insofar as necessary further to the execution of or the compliance with the Agreement. Upon taking delivery of the Documentation, the Client guarantees that it has taken and will timely take adequate measures in order to prevent that the Documentation or parts thereof are leaked to any persons other than the persons/third parties who may take cognizance of the Documentation on the grounds of this article.
- 5. Amendment to the Agreement**
- 5.1. Only In Writing: Any amendments to the Agreement can only be agreed upon In Writing. In the event that the Parties have reached agreement on a certain amendment to the Agreement, then Asperitas will confirm the amendment with the Client In Writing. It will in any case be evident from this confirmation what will be the intrinsic, financial and time-related consequences of the amendment.
  - 5.2. Content of the amended Agreement: Except for proof to the contrary In Writing to be provided by the Client, the amended Agreement will be deemed to have been concluded in accordance with the content of the confirmation In Writing referred to in the previous sentence, unless the Client objects to this Without Delay In Writing. The amendment to the Agreement will not be implemented if the Client timely objects to the amendment In Writing as referred to in the previous sentence.
- 5.3. Or amended implementation: If the Parties agree on the desired amendment to the Agreement in terms of content, yet the requirement to submit an Amendment In Writing as laid down in article 5.1 has not been met, and Asperitas is complying with the Agreement in its amended form with the knowledge of the Client, then the invoice or invoices received by the Client from Asperitas will be deemed to specify the correct content and scope of the amended Agreement, except with proof of the contrary to be provided by the Client.
  - 5.4. Costs of Item/Service already Supplied: If an amendment to the Agreement is agreed upon, then the Client will in any event be obligated to pay Asperitas the price as agreed upon for the Item/Service already Supplied by Asperitas at the time of the amendment.
  - 5.5. Costs of amendments: In the event that an amendment to the Agreement has been agreed upon, then the Client is to reimburse Asperitas for the costs involved further to this amendment, which costs will be determined in reasonableness by Asperitas. One may consider in this respect the cost price of materials or manpower already purchased, price changes on the part of Suppliers or the cancellation costs as a result of the cancellation of deliveries that were initially necessary further to the compliance with the unaltered Agreement.
  - 5.6. Delivery times change accordingly: If an amendment to the Agreement has been agreed upon then Asperitas will have the right to deviate from delivery times and completion times previously agreed upon insofar as such is necessary in the opinion of Asperitas in order to comply with the Agreement in its altered form.
- 6. Premature termination**
- 6.1. Mutual consent: Parties may mutually consent to the possible premature termination of the Agreement and under which terms and conditions the termination will take place.
  - 6.2. Terms and conditions premature termination: The termination will not take place before: The consensus to terminate the Agreement has been confirmed by Asperitas to the Client In Writing, stating all of the terms and conditions relating to the termination as agreed upon;
    - 6.2.1. The Client has not submitted an objection Without Delay to the confirmation as referred to in the previous section;
    - 6.2.2. All of the terms and conditions as agreed upon between the Parties further to the premature termination of the Agreement and as included by Asperitas in the confirmation In Writing have been met in full.
  - 6.3. Fee: If the Parties have agreed upon a fee within the scope of the premature termination that the Client is to pay to Asperitas, then the Agreement will not be terminated before the fee referred to above has been received by Asperitas supplementary to that stated in article 6.2.
- 7. Prices**
- 7.1. Euros: Unless the Offer specifies otherwise, all of the prices are in Euros and exclusive of VAT, exclusive of import duties and other levies, taxes or excise duties, exclusive of the packaging costs, exclusive of the costs of insurance and exclusive of the removal charge(s).
  - 7.2. Costs of transport and insurance The Netherlands: Unless otherwise agreed upon, the costs of transport and insurance within The Netherlands are at the expense of the Client.
  - 7.3. Costs of transport and insurance abroad: Deliveries will take place ex-works manufacturer in accordance with the most recent version of the Incoterms that apply at the time that the offer is made, unless otherwise agreed upon.
  - 7.4. Other costs: The costs of assembly, installation, building in, erecting, building on, linking or unlinking, construction, connecting, adjusting, synchronising, calibration, validation, gauging, instruction, tests, inspection and putting into operation are only included in the price, or at least make up part of the delivery, insofar as the Parties have agreed upon this In Writing.
  - 7.5. Exchange rate fluctuations > +/- 2%: In the event of an Offer without obligation and also if this proviso is included in a binding Offer, Asperitas will be entitled to adjust the prices if the official currency rate on the date of the delivery differs more than 2% from the currency rate on the date upon which the Offer was made, in which the latter currency rate is set at 100.
- 8. Risk**
- 8.1. Risk transport within The Netherlands: For shipments within The Netherlands, the risk of theft, damage, destruction or deterioration

- is transferred to the Client upon the delivery of the goods concerned, taking into account the other provisions in this article.
- 8.2. Risk transport Abroad: For shipments outside The Netherlands, the risk relating to the transport is provided for in accordance with the provisions of the Incoterms as agreed upon by the Parties (see article 7.3).
- 8.3. Transport risk within the gates: The risk during transport on the premises of the Client is at all times at the expense of the Client, unless the Client can prove that the damage was brought about due to intent or gross negligence on the part of the management of Asperitas.
- 8.4. Risk of transporting abroad: In the event of transport outside The Netherlands, the risk of theft, damage or deterioration shall in any case pass to the Client at the point at which Asperitas has fulfilled all its obligations under the agreed provisions of the Incoterms (Ex Works).
- 8.5. Risk actions: Except in cases of intent or gross negligence by Asperitas' management and unless agreed otherwise, without prejudice to article 18, the Client shall bear the consequences of the following risks: The risk of theft, damage, perishing or deterioration of Item/Service Supplied by Asperitas, the property of the Client or that of third parties in connection with Asperitas carrying out of activities for the purpose of, among other things but not limited to, assembly, installation, fitting, extending, adding, connecting or disconnecting, constructing, joining, adjusting, setting, calibration, validation, gauging, instruction, tests, control and commissioning.
- 8.6. At-risk items held by Asperitas: If Asperitas has separated items from its other stock items for the Client but has not yet delivered these for whatever reason or if Asperitas is holding items for the Client, for example, for repair, inspection, calibration, validation, training, tests, or other reasons, the Client shall bear the risk of loss, theft, damage, perishing or deterioration unless the conscious risk was realised as a result of intent or gross negligence on the part of Asperitas' management.
- 8.7. Risk of returning the Client's items: If Asperitas has items from the Client in its possession, for example, for repairs, inspection, etc., and these items are to be forwarded or transported for any reason, the Client shall bear the risk of loss, theft, damage, perishing or deterioration during transport.
- 9. Delivery**
- 9.1. Administrative costs: Asperitas can, for orders not exceeding an amount to be determined by Asperitas, charge a fee to be determined by it as a contribution to the administrative and logistic costs.
- 9.2. Point of delivery: The point of delivery in the case of delivery within The Netherlands shall be the point at which the goods to be delivered are offloaded at the agreed location. The point of delivery shall, in the case of delivery outside The Netherlands be the point at which Asperitas has fulfilled all obligations under the Incoterms as agreed by the Parties (see article 7.3). For the point at which the risk passes, see article 8, for the point at which ownership passes, see article 17.
- 9.3. Reporting transport damage, etc.: The Client shall report any shortages, shortcomings and damage In Writing directly to Asperitas within 24 hours of the delivery failing which the goods shall be considered as having received by the Client in good order, complete and free of damage or shortcomings.
- 9.4. Partial deliveries: Asperitas shall be entitled to deliver the goods in parts and to invoice these separately.
- 9.5. Acceptance: If and as far as a test, a sample or an inspection has been agreed in the Agreement for a delivery ("Acceptance Test") and a Shortcoming is noted here, this Shortcoming shall be reported immediately in accordance with article 18.4. If no Shortcoming is reported Without Delay after the Acceptance Test in accordance with article 18.4, the delivery shall be considered to correspond to the Client's justified expectations. If the Client makes any use of the Equipment for productive or operational purposes before explicit acceptance, the Equipment shall be considered fully accepted as from the start of that use.
- 9.6. Returns: Returns to Asperitas of goods supplied by Asperitas or any part of these, shall, for whatever reason, take place only following prior confirmation In Writing and subject to any forwarding instructions from Asperitas to the Client.
- 9.7. Unaccepted goods: If the Client rejects a delivery from Asperitas or informs it that it shall not accept a delivery, Asperitas shall nevertheless be entitled to invoice the Client for the respective goods and to store or arrange for the storage of such goods at its own discretion at the Client's expense and risk if it deems this to be appropriate without prejudice to all other rights afforded to it under the law in connection with the Client's failure to comply.
- 9.8. Permits: The Client shall, at its expense, take care of all permits, concessions, licenses, approvals, etc., that Asperitas shall require in order to fulfil all its obligations under this Agreement.
- 10. On demand orders**
- 10.1. Definition: The Parties may agree that the Client shall purchase a certain quantity within a certain period and that the Client shall purchase this quantity in more than one separate delivery in accordance with a fixed demand schedule. This arrangement shall be referred to below as an "On Demand Order". Asperitas shall in such case be entitled to invoice separately for such special deliveries.
- 10.2. Deviations from the on demand schedule: Once an On Demand Order has been agreed, the Parties may agree that a certain delivery time in the delivery schedule may be deviated from subject to the following paragraphs of this article.
- 10.3. Written confirmation: A change to the on demand schedule shall not take effect until Asperitas has confirmed the changed delivery dates for the respective part deliveries to the Client In Writing.
- 10.4. Extended storage: If due to an agreed change to the on demand schedule, Asperitas is required to keep goods in storage for longer than would be the case if the original on demand schedule had been adhered to, Asperitas shall hold these at the Client's expense and risk.
- 10.5. Changes to on demand schedule and end date: If the Parties agree on a new delivery date for a specific part delivery with respect to an On Demand Order, the other agreed delivery dates for part deliveries shall remain unchanged and so shall not also automatically be postponed. A new agreed delivery date for a part delivery shall not be later than the originally agreed delivery date for the last part delivery of the On Demand Order. If the Client wishes to change the last date of the On Demand Order, this Agreement shall be amended in accordance with article 5.
- 10.6. Interruption of On Demand Order: An On Demand Order may only be terminated on the approval of both Parties in accordance with article 6. If the agreed price was based on the purchase of a certain volume and if on the final purchase of a lower volume, a higher price is charged, the Client shall in any case be obliged to pay the additional amount without prejudice to article 6.
- 11. Spare parts**
- 11.1. After the warranty period Asperitas cannot be obliged to deliver spare parts with respect to the goods supplied after expiry of the agreed warranty period.
- 11.2. Warranty on spare parts: If Asperitas supplies or fits spare parts for rectifying a Shortcoming, the warranty period shall not recommence with respect to these spare parts. The warranty period for the original delivery shall remain unchanged.
- 11.3. Parts that are no longer available: As far as Asperitas shall be obliged under the law or this Agreement to deliver spare parts for goods or parts thereof supplied previously to the Client, this obligation shall lapse at the point at which Asperitas ceases to stock these spare parts and when they cease becoming available on the market at reasonable conditions via regular channels.
- 11.4. Similar goods/parts: If Asperitas shall be obliged to replace goods or parts thereof that were supplied to the Client, it shall be free to supply similar goods or parts if it believes that these are suitable for normal use for which the replaced goods or parts thereof were suitable.
- 11.5. Consumables: As far as the Parties have reached no Agreement In Writing as to the deliverability of consumables, Asperitas shall no longer be obliged to be able to deliver such goods on expiry of the agreed warranty period.
- 12. Delivery times**
- 12.1. (Overseas) Deliveries: It is possible that goods such as parts, semi-finished products or raw materials required for their production ("Overseas Deliveries") shall be delivered directly or indirectly from various continents and countries and/or drawn from different suppliers. Asperitas cannot rule out that these (Overseas) Deliveries in exceptional cases can only be obtained with great difficulty or cannot be obtained at all over a certain period due for example, to the scarcity of raw materials on the world market, environmental catastrophes and significant fluctuations on the supply market. Asperitas cannot therefore always foresee (exactly) when it shall be able to deliver when the order is placed. In order to inform the Client as accurately as possible, Asperitas shall act as stipulated in the following paragraphs of this article.
- 12.2. Non-binding deadlines: Asperitas shall state the estimated delivery times in its Offer. Asperitas can verify and confirm these estimated delivery times to the Client once this Agreement has been concluded. The verified delivery times may deviate from the

estimated delivery times in the offer. Neither estimated delivery times nor verified delivery times shall be binding. All delivery and other periods Asperitas has stated or agreed to have, to the best of its knowledge, been determined on the basis of data known to it when it entered into the Agreement. Asperitas shall properly exert its best efforts to observe agreed delivery and other periods to the extent possible. The mere fact that a stated or agreed delivery or other period has been exceeded shall not cause Asperitas to be in default. In no case, therefore, including those where the Parties have explicitly agreed on a firm date In Writing, shall Asperitas be in default because of a time period being exceeded unless the Client has provided it with a written notice of default. Asperitas shall not be bound by firm or non-firm delivery or other periods that can no longer be met because of circumstances beyond its control that have occurred after the Agreement was concluded. Nor shall Asperitas be bound by delivery periods, firm or otherwise, if the Parties have agreed to modify the substance or scope of the Agreement (additional work, change in specifications etc.). If any period is in danger of being exceeded, Asperitas and the Client shall consult with each other as soon as possible.

- 12.3. Extended delivery times: Due to the fact that the purchase, production, assembly and transport of the ordered goods and the substances, raw materials and semi-finished products used in their manufacture can be prone to unexpected situations over which Asperitas in all reasonableness has no influence in its assessment, Asperitas shall be entitled at all times to extend the verified delivery times by a maximum of four weeks. Asperitas shall to this effect send confirmation of the new verified delivery period(s) prior to expiry of the verified delivery deadline.
- 12.4. Termination after fourth extension: The Client shall be entitled to terminate all or part of this Agreement if the expected delivery time has been extended more than four times. If the Client terminates this Agreement based on this condition, this shall not lead to any obligation by either Party to compensate for any damage suffered by the other Party as a result of this termination.
- 12.5. Binding deadlines: If the Parties on request from the Client have agreed that deliveries shall take place on a specific day and that it shall be stipulated In Writing before or on concluding this Agreement that later delivery shall not be acceptable, Asperitas shall, with respect to the exceeding of these agreed delivery times, not enter into default until it has been placed in default In Writing and has been provided with a reasonable period for delivery. For determining such reasonable period, account shall be taken in any case but not exclusively, of the actually current delivery periods and the production times, the duration of any transport and the availability of raw materials and building materials.
- 13. Force majeure (no-fault failure)**
- 13.1. No obligation in the case of force majeure: Neither of the Parties shall be obliged to fulfil any obligations, including any warranty obligations agreed between the Parties if it is prevented from doing so as a result of force majeure.
- 13.2. Scope: Force majeure shall be deemed to include: (i) force majeure on the part of Asperitas' Suppliers, (ii) failure to properly fulfil obligations by Suppliers that the Client requires Asperitas to use, (iii) deficiency of items, equipment, software or materials from third parties that the Client requires Asperitas to use, (iv) governmental actions, (v) electricity failure, (vi) failure of the Internet, service providers, computer network or telecommunication facilities, (vii) war, (viii) occupation, (ix) strike, (x) general transport problems and (xi) the unavailability of one or more members of staff whose personal efforts are essential in carrying out this Agreement, (xii) terrorist attacks or occupation, (xiii) epidemics and pandemics, (xiv) financial crisis, (xv) the non-functioning of the payment network of the banks concerned.
- 13.3. Dissolution: Each party shall be entitled to dissolve this Agreement In Writing if force majeure lasts for longer than ninety days. Any work already carried out on the basis of this Agreement shall in that case be settled on a pro rata basis without the Parties having any further liabilities to one another. The Parties shall immediately make payment in connection with this settlement.
- 13.4. Reporting force majeure: If Asperitas wishes to claim force majeure, it shall inform the Client of this as soon as practically possible. The consequences of force majeure shall come into effect from the moment that the circumstance leading to this, the cause or incident has occurred.
- 13.5. Suspension: If Asperitas is prevented by force majeure from fulfilling any due obligation towards the Client and Asperitas believes that the force majeure shall be of a temporary or transitory nature, Asperitas shall be entitled to suspend the carrying out of

this Agreement until the situation that caused or is causing the force majeure has ceased.

- 13.6. Priority: If Asperitas is prevented from fulfilling its obligations towards one or more but not all of its customers or Clients due to force majeure, Asperitas shall be entitled at its own discretion to decide which obligations it shall fulfil, towards which customers and Clients and in which order.

#### **14. Warranty product warranty for Equipment**

- 14.1. With due consideration for the other provisions of these terms and conditions, Asperitas shall only guarantee that the Item/Service Supplied with the exception of consumables at the point of delivery shall comply with the product specifications and that they possess the properties confirmed by Asperitas to the Client In Writing in the Agreement. The Client is obliged to ensure the pre-requisites with regard to the proper functioning of the Equipment have been met.
- 14.2. Further support/Working: Life Support: The Parties may agree that Asperitas shall provide a support service exceeding that of the product warranty pursuant to article 14.1 in accordance with this paragraph. Asperitas shall provide such services to enable that Item/Service Supplied shall function and/or perform in a certain manner ("Working Life Warranty") if and as far as Asperitas has expressly confirmed this In Writing to the Client in the Agreement in accordance with article 2.2. A Working Life Warranty shall lapse at the point after delivery when circumstances transpire that Asperitas believes negatively affect the functioning of the Item/Service Supplied and that the Client had not already informed Asperitas of before or on concluding this Agreement and that Asperitas had confirmed to the Client In Writing. A Working Life Warranty shall lapse 12 months after delivery unless agreed otherwise.
- 14.3. Warranty period: Unless the Offer provides for other warranty periods, the warranty period stated in article 14.1 for new items shall be 12 months from the date of delivery. No warranty shall be provided for used items that Asperitas supplies unless the Offer states otherwise.
- 14.4. Reporting Shortcomings during the warranty period: If the Client has become aware of a Shortcoming and wishes to make a claim under the warranty regarding the defective delivery, the Client shall report this Shortcoming in accordance with article 18.4 failing which this right shall lapse.
- 14.5. Repair or replacement: If Asperitas believes there is indeed a Shortcoming that is attributable to it and the Client due to this shortcoming has rights under the warranty in accordance with article 14.1, Asperitas shall at its discretion either arrange for the repair of this Shortcoming or replacement of the respective item unless such repair or replacement cannot reasonably be expected of it.
- 14.6. Method of repair: Asperitas shall be free to carry out repairs itself, to outsource this or to engage third parties.
- 14.7. Returns to Asperitas: The Client shall send any goods under warranty to Asperitas at its own expense. The Client shall bear all costs arising due to this such as but not limited to, costs associated with fitting and extending, installation, calibration, verification, starting up, loss of production, waiting time, downtime, packaging, insurance and transport. Onsite repairs by Asperitas shall only be allowed when Asperitas confirms such In Writing, costs of transport, travel and lodging are excluded from the prices and shall be charged separately.
- 14.8. Reimbursement of costs: If Asperitas believes that the goods sent to it under warranty following inspection do not show any Shortcomings or if the Client has no rights under the warranty, the Client shall be obliged to reimburse Asperitas for all costs of inspection, storage and dispatch.
- 14.9. Repair onsite: Although Asperitas is not obliged to do so, it may offer the Client In Writing the possibility to have the goods that are subject to Warranty, being repaired onsite of the Client. In such event the travel and lodging and the transport of spare parts or replacements goods are not included in the Warranty and shall therefore be charged separately to the Client.
- 14.10. What is not covered by the warranty: Without prejudice to the other provisions of this article, the Client shall in no case be entitled under the warranty:
- 14.10.1. If the Item/Service Supplied has not been used for the purpose and under the circumstances for which they were delivered;
- 14.10.2. If the Item/Service Supplied was used contrary to the instructions and regulations, etc.;
- 14.10.3. With regard to items provided by the Client for processing;
- 14.10.4. If the assumed shortcoming is the result of wear following normal use;

- 14.10.5. On Activities carried out with the character of an obligation to perform;
- 14.10.6. With respect to items required by the Client or drawn by Asperitas from third parties designated by the Client.
- 14.11. Lapse of warranty: All claims under the warranty shall lapse immediately at the point at which, without Asperitas' confirmation In Writing:
- 14.11.1. Changes, adjustments and/or repairs are carried out on the Item/Service Supplied;
- 14.11.2. The Item/Service Supplied is not or has not been used or handled carefully in accordance with the provided and/or applicable (factory) regulations or operating instructions;
- 14.11.3. The Item/Service Supplied is otherwise not or has not been used or handled properly;
- 14.11.4. The software has been adjusted or upgraded with respect to the Item/Service Supplied and this was not carried out by Asperitas itself or any third party designated by Asperitas;
- 14.11.5. The Item/Service Supplied is or has been used or applied for other purposes than originally intended;
- 14.11.6. The Item/Service Supplied is or has been used in a manner not reasonably envisaged by Asperitas based on e.g. aspects with which the Client provided Asperitas before or on concluding this Agreement.
- 14.12. Release from warranty obligations: As long as the Client fails to comply or comply fully with one or more of its contractual obligations towards Asperitas, Asperitas shall be released from its warranty obligations from the point at which the Client fails to properly fulfil its obligations up to the point at which the Client has once more fulfilled all its obligations towards Asperitas. The warranty period shall continue during the period that Asperitas has been released from its warranty obligations.
- 14.13. Damage during the warranty period: As far as Asperitas shall be obliged during the warranty period to compensate for damage or costs incurred by the Client due to a Shortcoming, Asperitas' fulfilling the warranty obligation shall be considered the only and full compensation.
- 15. Quality of services and Work**
- 15.1. Asperitas shall use commercial reasonable efforts aiming:
- 15.2. it will provide the services in a proper, workmanlike and professional manner at all times;
- 15.3. Asperitas shall, to the best of its ability, exert itself to perform the Services with due care and, where appropriate, according to arrangements and procedures agreed upon In Writing with the Client. All of Asperitas' services will be performed being an agreement as provided for in article 7:401 Dutch Civil Code (Burgerlijk Wetboek) on the basis of a reasonable-efforts obligation, unless and in so far Asperitas has explicitly promised a result in the Agreement, and the result concerned has also been sufficiently defined and with the exclusion of article 7:408 Dutch Civil Code (Burgerlijk Wetboek);
- 15.4. it will exercise the reasonable standards of skill, care and diligence in the performance of the services;
- 15.5. it will retain a sufficient number of personnel, subcontractors or partners with the expertise required to provide the services; and
- 15.6. its personnel possess the required skills and experience required to provide the services.
- 16. Retention rights**
- 16.1. Right of retention: Asperitas shall have a right of retention over all goods from or on behalf of the Client in Asperitas' possession for any reason as far as the Client fails to fulfil any of its obligations towards Asperitas.
- 16.2. Creation of new items: If the Client creates (or helps create) a new item from items provided by Asperitas, the Client shall be considered as having created the new item for Asperitas until the Client has fulfilled all its obligations towards Asperitas under this Agreement. Asperitas shall in that case retain all the rights as the owner of the newly created item until the Client has fulfilled all its obligations. By entering into this Agreement with Asperitas, the Client grants it permission to enter its premises and buildings in order to seize its property.
- 16.3. Right of lien: The Client shall on first request from Asperitas and at the Client's expense, provide its assistance in fixing an unpropertied right of lien to newly formed items as provided for under article 16.2 that incorporate items supplied by Asperitas as far as the Client has not yet fulfilled all its obligations towards Asperitas.
- 17. Reservation of ownership**
- 17.1. Extended reservation: Without prejudice to article 8 on the risk and its transfer, all goods supplied by or on behalf of Asperitas shall remain Asperitas' property up to the point at which the Client has fulfilled all due obligations towards Asperitas.
- 17.2. Proper care: The Client shall be obliged – as long as under article 17.1, the goods supplied by or on behalf of Asperitas are still Asperitas' property – such goods shall be kept separately from other goods in such a way as to be easily and clearly identifiable as Asperitas' property.
- 17.3. Claims In case of non-payment of any amount owed and due by the Client to Asperitas and in the event that the Agreement ends other than by way of completion, Asperitas shall be entitled to demand the return, as its property of the goods to which the reservation of ownership relates and to take (or arrange for the taking of) measures, subject to the offsetting of any monies already paid for these goods without prejudice to Asperitas' rights to claim compensation for any loss or damages. In case of such non-payment or termination of the Agreement, any demand by Asperitas against the Client shall be immediately due in full.
- 17.4. Reclaiming goods: The Client shall on first request from Asperitas, issue authorisation for the immediate return of the goods not yet paid in full wherever these may be. The Client shall be obliged on first request from Asperitas, to provide its assistance in order to enable Asperitas to exercise its reservation of ownership including any disassembly, extension, shutting off, disconnection, etc.
- 17.5. Consequences of sale: The Client shall be entitled to sell or use the goods that are subject to reservation of ownership by Asperitas in its normal business activities; no security rights may however be attached to these goods and the Client may not carry out (or have carried out) any transactions with respect to these goods whereby these would become part or component of one or more other goods. If goods are delivered that are still subject to reservation of ownership by Asperitas, the Client shall be obliged to reserve ownership itself and on first request from Asperitas to transfer to Asperitas all demands against the Client's debtor up to the amount owed.
- 18. Prevention of damage, reporting Shortcomings**
- 18.1. Due care by Asperitas: Asperitas shall exercise the appropriate care in carrying out this Agreement as may in all reasonableness be expected of it. It cannot however be ruled out that the Item/Service Supplied by Asperitas shall not reach the Client free of Shortcomings due to events during transport or unforeseen circumstances or that they shall show Shortcomings resulting from the way the Client uses these.
- 18.2. Preventing damage: It may be possible to use the Item/Service Supplied by Asperitas for the Client's processes or installations. Asperitas shall not generally be aware of the manner in which the Item/Service Supplied is installed or used, the circumstances under which the goods delivered are used or the specific demands placed on the Item/Service Supplied. The Item/Service Supplied unexpectedly showing a Shortcoming may represent damage for the Client. The amount of this damage depends largely on how the Client's processes and installations are set up and the purpose of such processes and installations. What is important for example, is the manner and speed of monitoring, whether this is carried out redundantly, frequency and level of inspections, types and method of alarm in the event of malfunction, whether or not there is permanent supervision, troubleshooting procedures and related business processes, quality of maintenance, etc. Because all these parameters are within the Client's domain, the Client shall be responsible for taking sufficient measures to prevent unnecessary or an unnecessarily high level of damage if an Item/Service Supplied by Asperitas should develop a Shortcoming.
- 18.3. Warning: Use of items that are not functioning properly can have serious consequences for the functioning of processes or installations of which the Item/Service Supplied are part or for persons involved in this. Asperitas therefore strongly advises against this.
- 18.4. Report shortcomings: The Client shall report any Shortcomings to Asperitas In Writing immediately on gaining knowledge of this or reasonably being expected to have gained such knowledge when it would have taken sufficient measures provided for under article 18.2. The report of the Shortcoming shall be of such a concrete nature that it shall be clear to Asperitas without having to make any further enquiry as to what is the nature of the Shortcoming and what actions can be reasonably expected of it. The report on the Shortcoming shall describe all relevant circumstances that are or could be of importance for assessing what led to the Shortcoming.
- 19. Liability**
- 19.1. Conditions of damage compensation: Except in the case of intent or gross negligence by Asperitas' management and with consideration for the other provisions of GTCD2017 and in particular, the other

- paragraphs of this article, Asperitas shall only be obliged to compensate the Client for the direct damage that it has suffered due to a Shortcoming, for any act or omission, whether in contract, tort or any other legal or equitable theory during the term of this Agreement. The obligation to compensate for direct damages shall not arise before all the following conditions have been fulfilled:
- 19.1.1. The Client shall have informed Asperitas of the Shortcoming as described in article 18.4.
- 19.1.2. There must be a situation of default as provided for under articles 19.2 and 19.3.
- 19.1.3. The damage shall be attributable to Asperitas.
- 19.1.4. The Client shall have made it sufficiently clear that it has taken enough safety precautions to prevent or limit damage as stated for example, in articles 18.2 and 18.3.
- 19.2. Duration of default: Asperitas shall be in default during the period in which the performance is not forthcoming after this has become due and the conditions of article 19.3 have been fulfilled except in cases where this delay cannot be attributed to it or if Asperitas believes that compliance is already permanently impossible.
- 19.3. Notice of default: The default provided for in article 19.2 shall only apply once the Client has placed Asperitas in default In Writing whereby it is set a reasonable period in which to comply and it fails to comply within this period. For determining such reasonable period, account shall be taken in any case but not exclusively, of the actually current delivery periods and the production times, the duration of any transport and the availability of raw materials and building materials.
- 19.4. Liability insurance: Asperitas may at its own discretion but need not insure itself against damage that may occur as a result of a Shortcoming attributed to it in fulfilling its obligations towards the Client. If Asperitas has concluded liability insurance, this may affect the amount for which it may be held liable in case of such a Shortcoming. Asperitas shall send the Client a copy of a statement regarding the respective insurance policy on first request from the Client subject to Client confirming to treat such information as confidential information.
- 19.5. Limit of liability: The aggregate liability of Asperitas for any imputed failure(s)/Shortcomings, to perform under the Agreement, tort or otherwise, including for warranties and indemnifications, shall be limited to compensating direct damage, at most up to the lower of (i) 50% of the amount of the price (exclusive of VAT) stipulated for that Agreement or (ii) the remainder value of the Equipment at the moment the claim for damages was notified In Writing by Asperitas. If the Agreement is primarily a continuing performance agreement with a term exceeding 6 months, the maximum aggregate liability stipulated for the Agreement shall be set at the lower of (i) 50% of the total of the fees (exclusive of VAT) stipulated for 6 months or (ii) the remainder value of the Equipment at the moment the claim for damages was notified In Writing by Asperitas. The aggregate liability of Asperitas shall not, however, in any case exceed € 500,000 (five hundred thousand euros). "Direct damage" shall have no other meaning than:
- reasonable expenses the Client would have to incur to make Asperitas' performance conform to the Agreement; this alternative damage shall not be compensated, however, if the Agreement is rescinded by or at the suit of the Client;
  - reasonable expenses incurred to determine the cause and scope of the damage, in so far as the determination relates to direct damage within the meaning of the GTCD2017 under subparagraphs a. and b. above;
  - reasonable expenses incurred to prevent or mitigate damage, in so far as the Client demonstrates that these expenses resulted in mitigation of direct damage within the meaning of the GTCD2017. The liability limitation within the meaning of this paragraph shall be reduced by:
    - the invoice value of the products and (results of) services that the Client retains or has retained;
    - the credits already granted to the Client in connection with the Agreement.
- 19.6. Asperitas' total liability for injury or damage through death or bodily injury or because of material damage to objects shall never exceed € 1,250,000 (one million two hundred and fifty thousand euros).
- 19.7. The limitations mentioned in the preceding paragraphs of this article 19 shall not apply if and in so far as the damage or injury is the result of intentional acts or gross negligence by Asperitas or its managers.
- 19.8. Asperitas' liability because of an imputed failure to perform an Agreement shall in all cases arise only if the Client immediately and properly provides a written notice of default to Asperitas, with a reasonable time period for remedying the failure being given and Asperitas still imputed to be failing in the performance of its obligations after that period as well. The notice of default must contain as complete and specific a description of the breach as possible, so that Asperitas can respond adequately.
- 19.9. For any right to damages to exist, the Client must always report the damage or injury to Asperitas in writing as soon as possible after it occurs.
- 19.10. The Client shall indemnify Asperitas against all third-party claims because of product liability ensuing from a defect in a product or system that was delivered by the Client to a third party and that consisted in part of Equipment, software or other materials delivered by Asperitas, except if and in so far as the Client proves that the damage or injury was caused by that Equipment, software or other materials.
- 19.11. The provisions in this article shall also apply for the benefit of all legal and natural persons utilised by Asperitas in executing the Agreement.
- 19.12. Exemption of liability for indirect damage: Asperitas' liability shall in any case be excluded for indirect or consequential damage including in any case:
- Other damage than the damage for Asperitas for rectifying the direct consequences of the failure to comply;
  - Damage due to loss of profit, downtime, perishing or deterioration of goods as a result of downtime, loss of savings, stagnation or reduced goodwill;
  - Damage resulting from third-party claims including the Client's customers;
  - Damage in connection with the use of items by Asperitas stipulated by the Client such as but not limited to: installations, tools, machines, materials or data, information or software from third parties;
  - Damage in connection with Asperitas' engaging of Suppliers, Supplier, advisors or others stipulated by the Client;
  - Damage to mutilation, destruction or loss of data, digital equipment settings, software, information, details or documents;
  - And all other forms of damage or injury besides those mentioned in article 19.5 and 19.6, on any account whatsoever, shall be excluded.
- 19.13. Other exceptions Asperitas' liability shall also be excluded in the event of:
- Direct and indirect consequences of the Client's failing to adhere strictly to the use or operating instructions.
  - Normal wear and damage and/or wear due to improper use and as a result of overloading or any other form of abnormal use.
  - Abnormal or unforeseen circumstances or at least circumstances with which Asperitas in all reasonableness need not have taken into account based on the details with which it was provided on concluding this Agreement.
  - Damage against which the Client could have insured itself.
- 19.14. Cumulation: The exceptions and limitations of Asperitas' liability as provided for under article 18 shall not affect the other provisions and exceptions as provided for under GTCD2017.
- 19.15. Limitation: Any claim that the Client shall have against Asperitas shall lapse after twelve months after such claim arises and in any case after three years following delivery by Asperitas irrespective of the grounds on which this claim is based.
- 19.16. Release: The Client shall release and indemnify Asperitas from all third-party claims for compensation due to damage suffered by such third parties including claims due to product liability and the violation of intellectual property rights as a result of goods, including goods from Asperitas supplied by the Client to such third parties.
- 19.17. Claim against GTCD2017 by others: The provisions in this article and all other restrictions and exclusions of liability provided for in the GTCD2017 shall also apply in favour of Asperitas' employees and all (legal) persons of which Asperitas uses in carrying out this Agreement and for the benefit of the group of companies of which it is a part.
- 19.18. General conditions of third parties: With respect to goods and services that Asperitas has obtained from a third party, the conditions relating to the respective agreement as regards the warranty, spare parts and liability shall also apply to this Agreement between Asperitas and the Client if and as far as Asperitas claims this and provided those terms and conditions do not violate Asperitas' rights as laid down in this document. The Client shall give Asperitas the authority to accept a limitation of liability on the part of these third parties by entering into an Agreement.
- 20. Intellectual property rights**
- 20.1. Property: All intellectual property ("IP") rights to the Equipment, Item/Service Supplied, developed or provided by Asperitas to or for the Client – including Documentation, inventions, ideas, software,

- ICs, databases, diagrams, Equipment, samples, connections, methods, drafts, installations, solutions, analyses, designs, reports, quotations, etc., - shall remain exclusively with Asperitas or its licensor(s) or Supplier(s).
- 20.2. Rights of use of deliveries: Unless otherwise agreed In Writing, the Client shall in connection with the agreed deliveries, as far as applicable, acquire only the perpetual, non-exclusive and non-transferrable rights of use for the specific application for which the delivery was entitled and only for use in the country where the delivery was to take place according to the Agreement.
- 20.3. Registration of IP rights: As far as the rights provided for in 20.1 shall be subject to registration, before such rights shall arise, the Client shall be prohibited from performing the respective registration acts (or having this arranged) without Asperitas' permission In Writing.
- 20.4. Violation: If any goods sold by Asperitas to the Client in The Netherlands should unexpectedly violate any third-party property rights for which the Client is held liable, the Client shall be obliged to inform Asperitas of this immediately In Writing. Asperitas shall in such case be entitled to rectify this violation by:
- 20.4.1. Granting the Client the right to use these goods or;
- 20.4.2. Changing the goods in such a way that this shall no longer constitute a violation or;
- 20.4.3. Delivering replacement goods that do not constitute a violation or;
- 20.4.4. Refunding the Client for the purchase price once Asperitas has received the goods minus a reasonable fee for the period that the Client had the use of these goods. With respect to the violation of IP rights outside The Netherlands, the Client shall have no claim or demand against Asperitas.
- 20.5. Exclusion of IP liability: Asperitas shall not be liable for the violation of any intellectual property rights or any other exclusive rights resulting from:
- 20.5.1. Any change of or to goods sold or delivered by or on behalf of Asperitas;
- 20.5.2. Any use or application of such goods other than that prescribed by Asperitas or of which Asperitas may assume based on this Agreement;
- 20.5.3. Integration, use or application with goods not sold and delivered by or on behalf of Asperitas including (parts of) systems and networks;
- 21. Payment**
- 21.1. Conditions of payment: The Client shall pay the invoices in accordance with the conditions stated on the invoice. If no specific conditions are stated on the invoice, the Client shall pay within thirty days of the invoice date. The Client shall not be entitled to offset or suspend payment. The date indicated on Asperitas' bank statements on which a payment is received shall be considered the date on which the payment was made.
- 21.2. Before executing the agreement or continuing to perform under the Agreement, Asperitas shall at all times have the right to demand the security it deems sufficient - such as an initial payment, (periodic) payment in advance or a bank guarantee - to ensure that the Client complies with its (payment) obligations, even if this implies the exceeding of deadlines and/or times of delivery. Refusal by the Client to furnish the security demanded shall entitle Asperitas to rescind the Agreement, in whole or in part, by issuing a written declaration, without prejudice to the right of Asperitas to compensation of all forms of damage suffered by it on account thereof. Asperitas is authorised to transfer the amounts due from the Client to other entities within its group of companies or third parties. If and as soon as the Client exceeds the credit limit (if any) set by Asperitas' credit insurer, or the cover provided by the credit insurer has lapsed owing to the age of the invoices still owed by the Client, Asperitas shall have the right to rescind the Agreement in whole or in part by issuing a written declaration, without prejudicing its right to compensation for all damage it suffers as a result. Rescission on the grounds of the provisions of this article does not release the Client from its obligation to pay for the Activities, services and goods delivered up to the date of rescission.
- 21.3. Order of payment: Any payment made by the Client shall - if applicable - first of all be made against the interest owed by it as well as collection and administration costs and then with against any outstanding demands starting with the oldest.
- 21.4. Late payment: If the Client fails to pay the amounts due within the period agreed, the Client shall owe statutory trade interest on the amount still due as from the date the amount is due without any warning or proof of default being required, furthermore Asperitas is entitled to suspend delivery of services and products until all payments have been done. If, following a warning or proof of default, the Client persists in non-payment, the invoice can be passed on for collection, in which case the Client shall also be obliged to pay all extrajudicial and judicial costs in addition to the total amount then due, including all costs charged by external experts, on top of the costs established judicially in relation to the collection of this claim or the exercise of a right in any other manner, the amount of which will be at least 15% of the total amount. In addition, the Client shall owe the costs incurred by Asperitas for unsuccessful mediation if the Client is found to be at fault, either partially or wholly, by decision of a court.
- 21.5. Claims invoices: Claims regarding invoices shall be submitted to Asperitas In Writing within eight days of the date of these invoices.
- 21.6. Continuation of obligation to pay: The reporting of a Shortcoming as provided for in article 14.3 and/or article 14.6 shall not release the Client from its payment obligations towards Asperitas.
- 22. Termination of this Agreement**
- 22.1. Dissolution or fulfilment: If one of the Parties is in default, this shall entitle the other Party to dissolve all or part of this Agreement without prejudice to the right to demand fulfilment.
- 22.2. Compensation for damage: Asperitas shall not be liable for compensation to the Client in the event of dissolution by the Client.
- 22.3. Immediate termination: Asperitas may without notice of default dissolve this Agreement with immediate effect in the event the other Party is declared bankrupt, cedes property, is granted a (temporary or definitive) suspension of payment, in the event that all or part of the other Party's assets are seized or in the event that the other Party's enterprise is liquidated or wound up.
- 22.4. Consequences of dissolution: If either Party dissolves an Agreement in accordance with the provisions of this article, the amount that the Client shall owe to Asperitas at the point of termination or dissolution shall remain payable in full and the Client shall also be liable for interest and costs with respect to these amounts in accordance with the GTCD2017 without prejudice to Asperitas' right to demand compensation as well as the entitlement to use the rights flowing from the reservation of ownership, to take other (legal) measures as well as claim other rights due to Asperitas.
- 23. Cancellation at the Client's request**
- 23.1. Mutual Agreement: The Client can request that Asperitas agree to the annulling (cancelling) of an Agreement that has already been placed but not carried out. An Agreement may not be cancelled before the Parties have reached an Agreement In Writing on the conditions of such cancellation including the amount of the cancellation costs and once Asperitas is of the opinion that all agreed cancellation conditions have been fulfilled.
- 23.2. Point of cancellation: As long as the Parties have not reached an Agreement as to the cancellation conditions or as long as Asperitas is of the opinion that the cancellation conditions have not been fulfilled, the Agreement shall continue and the Parties shall remain mutually obliged to fulfil their obligations to one another under this Agreement.
- 23.3. Cancellation fee: Asperitas shall determine the amount of the cancellation fee on a case-by-case basis. The following factors among others are of importance in determining the amount of the cancellation fee:
- 23.3.1. The amount stated in the Agreement;
- 23.3.2. The extent to which the Agreement has already been carried out;
- 23.3.3. The type of Agreement (delivery of goods, development contract, delivery of a piece of work, a service contract, training/instruction, etc.);
- 23.3.4. The expenses that Asperitas has already incurred up to the point of cancellation and the obligations that Asperitas has entered into in connection with the carrying out of the Agreement;
- 23.3.5. The actions to be carried out by Asperitas in connection with the cancellation;
- 23.3.6. The profit that Asperitas loses as a result of the cancellation.
- 23.4. Damage due to cancellation: If an Agreement is cancelled, Asperitas shall in no case be liable to the Client for any damages that it incurs or might incur following this cancellation.
- 24. Export Control Laws**
- 24.1. Each Party shall obtain all permits necessary to and otherwise comply with all Laws on export control applicable to this Agreement and all transactions contemplated under this Agreement. In the event of export of resell products by Asperitas, reseller shall act in accordance with relevant export laws. Reseller shall indemnify Asperitas against any third-party claim in relation to violations of relevant export laws attributable to Asperitas.
- 25. Validity**
- 25.1. If any provision in these GTCD2017 is not completely valid or only partially valid and/or not enforceable as a result of any legal directive, judicial judgement or any directive, decision,

recommendation or measure from any local, regional, national or supranational authority or body or otherwise then this shall have no effect on the validity of the other provisions in these GTCD2017. If a provision in these GTCD2017 might not be valid for one or other reason indicated in the previous sentence but would be valid if it had a more limited range or scope then this provision shall be automatically valid with the most far-reaching or extensive range or scope with which or within which it is valid.

## 26. Applicable law and disputes

- 26.1. Dutch law: Dutch law shall apply to all Offers from Asperitas, any Agreement entered into by or on behalf of Asperitas and any other legal relations between the Parties. The United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention 1980) shall not apply.
- 26.2. The Parties will use their best efforts to negotiate in good faith and settle any dispute that may arise out of or relate to this Agreement or any breach of it. If any such dispute cannot be settled amicably through ordinary negotiations between representatives of the Parties, the dispute shall be referred to the management of each Party who will meet in good faith in order to try and resolve the dispute. If any such dispute cannot be settled amicably through ordinary negotiations between management of the Parties, the dispute shall be referred to a mutual to be agreed upon reputable mediation-institute who will try and resolve the dispute (the costs for engaging such mediation institute shall be equally shared between the Parties).
- 26.3. All negotiations connected with the dispute will be conducted in complete confidence and the Parties undertake not to divulge details of such negotiations except to their professional advisers who will also be subject to such confidentiality and such negotiations shall be without prejudice to the rights of the Parties in any future proceedings.
- 26.4. In the event any such dispute is unresolved after thirty (30) days of the commencement of such negotiations referred to in article 26.2, such disputes arising out of or in connection with the Agreement, including any question regarding its existence, validity or termination, shall be finally settled by the courts.
- 26.5. Choice of court: Disputes arising from a contract concluded between Asperitas and the Client shall be adjudicated by the competent court of the district in which Asperitas is located as the court in the first instance with the proviso that if a particular court is mandatorily appointed as competent court then the dispute shall be decided in the first instance by the court so appointed without prejudice to Asperitas' right to seizure or to take other provisional measures at the place(s) and before the legal bodies that Asperitas wishes.
- 26.6. Miscellaneous: The provisions of article 26.2 shall not affect Asperitas' right to submit a dispute before the court competent under normal rules of competence or to have this settled by arbitration or binding advice.

## PART B. REGARDING AGREEMENTS FOR THE SALE OF EQUIPMENT AND OTHER GOODS

### 27. Delivery of Equipment

- 27.1. The conditions in Part B of the GTCD2017 shall apply to all legal relations between the Client and Asperitas regarding the on delivery of Equipment, shall apply if Asperitas delivers Equipment to the Client, without prejudice to the applicability of the provisions of Part A of the GTCD2017, which, as far as applicable, shall also apply to on delivery of Equipment. In so far as the purport of the following provisions is not inconsistent with this, the term "Equipment" shall also include separate equipment parts.

### 28. Selection of Equipment, software and/or services, delivery and risk

- 28.1. The Client shall bear the risk of selecting the Equipment and services purchased. Asperitas does not warrant that the Equipment and/or services is appropriate for the use intended by the Client, unless the intended uses have been clearly specified without reservation in the written Agreement between the Parties and related in sufficient detail to the concerning Equipment and/or services.

### 29. Environment requirements and installation

- 29.1. If agreed In Writing, Asperitas shall install the Equipment or have them installed. Any requirement for Asperitas to install Equipment shall not include the requirement to install software or to backup data, data restore, data recovery and conversion.
- 29.2. The Client shall ensure an environment, which meets the requirements specified by Asperitas for the Equipment in a

particular case (for example concerning temperature, humidity, technical environment requirements and the like). In any case, the Client shall provide a proper installation site with the proper technical environment conditions, such as temperature, ventilation, humidity, electric power supply and connections, and all necessary facilities, such as wiring and telecommunications facilities, at least five days before delivery of the Equipment. The Client shall also follow all instructions given by Asperitas in connection with the installing of the facilities. If so desired, Asperitas shall submit an offer to the Client for installation of these facilities.

- 29.3. To enable Asperitas to perform the necessary work, the Client shall give Asperitas access to the installation site during Asperitas' normal working days and hours.
- 29.4. The Client shall be fully responsible and liable for maintaining the technical environment conditions required for the proper functioning of the Equipment in the computer rooms or other rooms where the Equipment and the accessories belonging thereto are positioned, as well as for the proper operation of the Equipment by the Client's staff and the co-operation between the Client's staff and Asperitas' staff.

## 30. Guarantee

- 30.1. Asperitas shall do its utmost to fix, to the best of its ability, any defective material and any manufacturing defects in the Equipment and parts it delivers in connection with its guarantee or maintenance, within a reasonable time period, if the defects have been reported in a detailed report submitted to Asperitas within the warranty period. If, in Asperitas' reasonable judgment, repairs are not possible, will take too long or will entail disproportionately high costs, Asperitas shall be entitled to replace the Equipment free of charge with other, similar, but not necessarily identical, equipment. This guarantee shall not include data conversion that is necessary due to repairs or replacement. All parts replaced shall be the property of Asperitas. The guarantee obligation shall be extinguished if the defective material or manufacturing defects are the result, either completely or in part, of incorrect, careless or incompetent use, external causes such as fire or water damage, or if, without Asperitas' permission, the Client introduces changes or causes changes to be introduced in the Equipment or in the parts delivered by Asperitas in connection with the guarantee or maintenance. Asperitas shall not withhold such permission on unreasonable grounds.
- 30.2. Asperitas shall charge work and repair costs (for time, materials and parts used) falling outside the scope of this guarantee in accordance with its usual rates.

## 31. Standard products from Suppliers of Asperitas

- 31.1. If and in so far as Asperitas provides the Client with standard products from or produced by third parties, those third parties' terms and conditions shall replace the provisions deviating there from in these GTCD2017 and shall apply with regard to these standard products, provided that Asperitas notifies the Client in writing that it concerns standard products from or produced by third parties, or if this fact is otherwise known to the Client and provided those terms and conditions do not violate Asperitas' rights as laid down in this document. The Client shall accept the aforementioned third-party terms and conditions. These terms and conditions shall be available for the Client's inspection at Asperitas' office and Asperitas shall send these terms and conditions free of charge to the Client at its request, or submit them or cause them to be submitted by way of shrink-wrap or click-wrap terms and conditions. If and in so far as the aforementioned third-party terms and conditions are deemed or declared inapplicable to the relationship between the Client and Asperitas for any reason whatsoever, the provisions in these GTCD2017 shall apply.

## PART C. REGARDING AGREEMENTS FOR CARRYING OUT ACTIVITIES AND CONTRACTING FOR WORK

### 32. Applicability

- 32.1. Activities and Work: The conditions in Part C of the GTCD2017 shall apply to all legal relations between the Client and Asperitas regarding the carrying out of Activities and the contracting for Work without prejudice to the applicability of the provisions of Part A of the GTCD2017, which, as far as applicable, shall also apply to the carrying out of Activities and the contracting for Work.
- 32.2. The provisions of Part C of the GTCD2017 therefore complement the provisions of Part A of the GTCD2017. In the event that a provision from Part C of the GTCD2017 shall also apply and is in conflict in whole or in part with a provision from Part A of the GTCD2017, the provision under part C of the GTCD2017 shall prevail.

**33. Definitions**

- 33.1. Contracting for Work: Creating (making, building or delivering) an item of a material nature on the Client's behalf. This could include for example, making an installation, a test set-up, a system, machine, equipment, circuit board, control box, etc. Before completing the Work, the Parties shall normally agree a recommended price, establish specifications and agreements on additional or less work and the method of administering tests.
- 33.2. Design Data: All details and circumstances including information, data, specifications, demands, method of use and environmental conditions based on which Asperitas is to carry out Activities or deliver Work or that it should otherwise take into account in carrying out this Agreement as far as the Client provided these before or on concluding this Agreement and Asperitas has confirmed these to the Client. As far as during the carrying out of this Agreement, additional relevant details and/or circumstances are known to Asperitas, these shall only form part of the Design Data if Asperitas has expressly confirmed this In Writing to the Client.
- 33.3. Order: The order for carrying out of Activities and/or delivering Work as specified in this Agreement, the GTCD2017 and the Design Data.

**34. The Order**

- 34.1. Conclusion: The Agreement for the delivery of Activities and/or Work shall only be concluded taking into consideration article 3. The application of article 3.7 shall be excluded for the delivery of Activities or Work or pieces of Work.
- 34.2. Scope: The scope of the order and the specifications to which the Item/Service Supplied shall correspond, shall only be determined based on what the Parties have agreed on In Writing.
- 34.3. Obligation to perform: The Activities to be carried out by Asperitas shall be in the form of an obligation to perform unless expressly agreed that this shall have the character of an obligation to produce results and the envisaged result is described with sufficient positiveness with due consideration for the following paragraph.
- 34.4. Obligation to produce results: The Parties may agree In Writing that Asperitas is to achieve a concrete result in carrying out the order. In this case, an obligation to produce results shall not exist unless the following conditions are also fulfilled:
- 34.4.1. The Client shall notify Asperitas of and confirm to it all the design data required by Asperitas that are important for achieving the agreed result before or during the conclusion of this Agreement.
- 34.4.2. Following the conclusion of this Agreement, nothing has been changed in a negative sense in Asperitas' opinion regarding the information, details and circumstances stated in the previous point.
- 34.4.3. The criteria based on which and the circumstances in which it shall be assessed as to whether the agreed result has been achieved shall be measurable in crystal-clear and objective manner as agreed.
- 34.4.4. Asperitas shall confirm to the Client In Writing the method in which the Parties establish whether the agreed result has been achieved before or on concluding this Agreement.
- 34.5. Partial obligation to produce results: As far as the Parties have indeed agreed an obligation to produce results but not all the conditions for this have been fulfilled, this Agreement shall assume the character of an obligation to perform as far as Asperitas believes that the guaranteed result could not be achieved as a result of the failure to comply with the conditions for this.

**35. Scope**

- 35.1. Basis for the Activities and the Work: Asperitas shall carry out the agreed Activities and the agreed Work based on the design data.
- 35.2. Format of design data: The Client shall as far as possible deliver the design data digitally, in the agreed format. The design data shall be delivered digitally in the format stipulated by Asperitas unless agreed otherwise. The Client shall carry out the necessary adjustments, arrangements, conversions and sorting of the design data on first request from Asperitas.
- 35.3. Access to systems: As far as Asperitas considers it important that it has access to the Client's installations, networks or systems for carrying out the Activities, the Client shall provide Asperitas with its assistance Without Delay. Asperitas shall not be responsible for damage or costs as a result of using the Client's networks, systems or installations unless the Client can show that the damage or costs are the result of intent or gross negligence by Asperitas' management.
- 35.4. Accuracy of design data: The Client shall ensure the correctness and completeness of the design data. If Asperitas believes that the design data contain errors, it shall be entitled to suspend its Activities until the Client has rectified such errors. The Client shall in

any case be liable to Asperitas for the applicable fee with respect to the part of this Agreement already carried out while Asperitas shall then be entitled to charge extra fees in accordance with its normal rates and without prejudice to its right to claim compensation. The Client may not derive any right to any fees from Asperitas' suspending work irrespective of the grounds for this.

- 35.5. Client's obligation to inform: The Client shall remain obliged to inform Asperitas in good time of all relevant details and circumstances within its domain and that may be important for carrying out this Agreement.

**36. Delivery period**

- 36.1. Start of delivery period: If the Parties have agreed a certain delivery period, this period shall begin on the day following the day on which, as far as applicable, each of the following conditions has been fulfilled: The Agreement regarding the order has been concluded.
- 36.2. The Client has provided all the design data in the correct format that Asperitas considers necessary for carrying out the order.
- 36.3. Asperitas has received the advance sum if such an advance has been agreed.
- 36.4. The day on which all the formalities that Asperitas considers necessary in connection with the carrying out of the order are fulfilled, including the obtaining of permits.
- 36.5. If an order has to be carried out on premises or an installation, network or system designated by the Client in connection with the carrying out of this order, Asperitas is of the opinion that this/these has/have been prepared and Asperitas has or shall be granted unhindered access to this/these.
- 36.6. Delivery date instead of delivery period: If a delivery date instead of a delivery period has been agreed, the delivery period shall be the same as the number of days between the point at which this Agreement is concluded and the agreed delivery date. This period shall not begin before the point at which all conditions provided for under article 36.1 have been complied with. The point of delivery shall in this case be the point at which the delivery point stated has lapsed with consideration to the other provisions of article 36.
- 36.7. Delay: If a delay occurs in carrying out the order that is not completely attributed to Asperitas, the delivery period shall be extended by the duration of the delay.
- 36.8. Extending the delivery period: If when carrying out the order, the conditions for commencement of the delivery period as described in article 36.1 are no longer fulfilled and Asperitas believes that this is impeding the progress of the agreed Activities and/or Work, the delivery period shall be extended by the number of days on which the conditions have no longer been fulfilled.
- 36.9. Non-binding delivery period: Notwithstanding article 12, the agreed delivery period shall be an estimate based on delivery times from suppliers, information and circumstances of which Asperitas is aware at the point at which the Offer is made. If during the delivery period, circumstances occur outside the responsibility of Asperitas whereby the agreed delivery period is no longer feasible, the delivery period shall be extended as far as necessary in the opinion of Asperitas.
- 36.10. Delay > 16 weeks: In the event that the total delay as stated in article 36.5 amounts to more than 16 weeks in excess of the periods mentioned in article 12.4, the Client shall be entitled to terminate this Agreement. Asperitas shall in such case not be obliged to compensate the Client for any damage or costs incurred due to later delivery and/or termination.

**37. Additional/less Work**

- 37.1. Changes/extensions/limitations: The Parties may agree on a change or additional or less work with respect to the agreed Activities or Work. If this Agreement involves a fixed price, Asperitas shall inform the Client as to the financial, time and other consequence of any change that may be desired.
- 37.2. Additional/less work equals amendment: If the Parties agree on a change or additional or less work, this shall be considered an amendment to this Agreement as provided for under article 5.
- 37.3. Postponement of delivery times: If the Parties agree on an amendment to this Agreement, the agreed delivery time or delivery date shall be extended or postponed by the number of days required to complete the change to this Agreement.
- 37.4. Necessary amendment: If Asperitas in connection with the carrying out of the Activities or the Work believes that an amendment and/or extension of this is necessary or in all reasonableness, desirable, it shall inform the Client accordingly. If the Client then fails to agree In Writing within 14 days to the proposed amendment(s) and/or extension(s) and the associated price change, Asperitas shall be entitled to suspend the carrying out of its obligations towards the Client. The Client shall in this case be obliged to pay Asperitas a fee

for the Activities already carried out and the Item/Service already Supplied based on Asperitas' applicable rates without prejudice to Asperitas' right to claim compensation for the damage it suffers.

- 37.5. Payment for additional work: Asperitas may invoice separately for any additional work once Asperitas has completed this additional work unless agreed otherwise.

### 38. Delivery and acceptance

- 38.1. Milestones: If it has been agreed that the Order will be executed in stages, Asperitas will be entitled to postpone or suspend the Activities and deliveries regarding a next step or stage or any part of those Activities or deliveries until the Client has approved of the results of the previous step(s) or stage(s) In Writing in accordance with the agreed test criteria.
- 38.2. Test period: Unless otherwise agreed and subject to an Acceptance test being agreed In Writing in the Agreement, the Client will test the Item/Service Supplied in relation to the agreed test criteria within the test period of 8 (eight) working days, counting from the moment that Asperitas has made known that the Item/Service Supplied is ready for acceptance.
- 38.3. Extension of test period: If it appears during the performance of the test(s) that the progress of the test(s) is impeded by a Shortcoming in the Item/Service Supplied, the Client will notify Asperitas thereof In Writing as detailed as possible; in such a case, the test period will be interrupted until the Item/Service Supplied is offered for testing again.
- 38.4. Notification of Shortcomings in the Item/Service Supplied during tests: The Client will report to Asperitas any Shortcoming that is detected during the tests or during the guarantee period, appropriately substantiated and documented. Asperitas is not obliged to rectify a Shortcoming before it has received all information from the Client that is available and required to rectify the Shortcoming.
- 38.5. Costs of rectification of Shortcomings: Any Shortcoming established during the tests will be rectified free of charge when a fixed price has been agreed. If no fixed price has been agreed, Asperitas will be entitled to a reasonable fee in accordance with the agreed prices and rates for the efforts involved in rectifying the Shortcoming.
- 38.6. Test criteria: The test criteria should preferably be agreed by the Parties In Writing before or on entering into the Agreement. Subjective criteria do not form part of the test criteria. Criteria agreed at a later stage will only apply insofar as they have been confirmed by Asperitas In Writing to the Client. The Client is not entitled to invoke that the Item/Service Supplied does not comply with certain requirements when these requirements do not form part of the agreed test criteria. When the test criteria are not fulfilled, it is considered a Shortcoming as referred to in Article 1.6.
- 38.7. Moment of delivery Item/Service Supplied: The Item/Service Supplied is duly delivered and accepted on the earliest of the following: The moment at which the Client has inspected the Item/Service Supplied after testing it in accordance with the agreed test criteria, and has not detected any essential Shortcomings as referred to in Article 38.9;
- 38.8. The moment at which the test period has expired, counting from the day following the day on which Asperitas notified the Client In Writing that the Item/Service Supplied is ready for acceptance and the Client has failed to test the Items/Service Supplied within the test period;
- 38.9. The moment at which the test period has expired, counting from the day following the day on which Asperitas notified the Client that the Item/Service Supplied is ready for acceptance and the Client has not informed Asperitas of an essential Shortcoming in the Item/Service Supplied In Writing (as described in Article 38.9);
- 38.10. The moment that the Client has in fact put into use the Item/Service Supplied or the Equipment which it forms part of or has started to form part of after it was installed;
- 38.11. The moment at which the Client has paid the invoices for the Item/Service Supplied.
- 38.12. Activities after delivery: Insofar as the delivery of a Work has been agreed and Asperitas still has to carry out Activities (for example calibration or giving instructions) in relation to that Work, the Work will nevertheless be considered as delivered and accepted when the Work itself is considered as delivered and accepted pursuant to Article 38.7.
- 38.13. Essential Shortcoming: An essential Shortcoming means: a failure that significantly impedes the normal operations or the normal use of the Item/Service Supplied in the opinion of Asperitas.
- 38.14. Rectification of non-essential Shortcoming: If in relation to the acceptance, in the context of tests, only one or more non-essential Shortcomings are established, the Item/Service Supplied will be considered as delivered. Asperitas is obliged to rectify this (these)

non-essential Shortcoming(s) as soon as possible. A non-essential Shortcoming will not give the Client the right to not accept the Item/Service Supplied, to terminate the Agreement in full or in part or to suspend payment.

- 38.15. Advices: Advices, information provided, details and/or suggestions given by Asperitas regarding the use, placement, starting-up, assembly, extension, etc. of the Item/Service Supplied only have the character of a guarantee of i.e. return, accuracy, compatibility with other items, effect in a certain environment, or installation, etc. when explicitly agreed and subject to the provisions of Article 14.1.

### 39. Guarantee

- 39.1. Mutatis mutandis provision: The guarantee provisions of Article 14 of GTCD2017 apply mutatis mutandis to the delivery of Work and Activities, insofar as they can be considered to apply as regards the specific character of the Item/Service Supplied.
- 39.2. In accordance with agreed specifications: Asperitas guarantees that it will carry out the Activities and the Work with due observance of the design data, and that it will carry these out in such a way that they will comply with the agreed specification and the requirements reasonably set for this with due observance of Article 34.2.
- 39.3. Exclusion: Asperitas will not give a guarantee on items that have been assembled, installed, fine-tuned, calibrated, validated, tested, inspected, adjusted and/or started up, etc. by or on behalf of Asperitas, but that have not been supplied by or on behalf of Asperitas itself.

### 40. Liability

- 40.1. Notwithstanding the provisions in Article 19 the following provisions will apply:
- 40.2. Exclusions in connection with Activities: Asperitas is not liable for any damage or costs incurred as a result of:
- 40.2.1. Activities undertaken on or in connection with goods supplied by third parties;
- 40.2.2. Incorrect, late or incomplete delivery of design data by the Client;
- 40.2.3. Use, testing, commissioning or decommissioning of a Work, which goods supplied by third parties form part of or in which such items are assembled or installed, or Activities undertaken in order to do so;
- 40.2.4. The carrying out of Activities on a Work that has become part of an item of the Client (for example by assembling it) in the period before the moment that the Item/Service Supplied has been delivered and accepted;
- 40.2.5. Items used during the carrying out of the Activities on request, recommendation or instruction of the Client;
- 40.2.6. Activities carried out by individuals recommended or appointed by the Client.
- 40.3. Exclusions in connection with Work: Furthermore, Asperitas is not liable for any damage or costs incurred as a result of:
- 40.3.1. The design or parts of the design of the Work insofar as this design/these parts of the design has/have not been fully created by Asperitas;
- 40.3.2. The malfunctioning of the Client's machines, installations or processes, of which the Item/Service Supplied has started to form part of in the period before the moment at which the Item/Service Supplied was properly delivered and accepted;
- 40.3.3. The use of certain parts in the Work insofar as those parts have been used at the request, recommendation or instruction of the Client or have been obtained from a Supplier appointed or recommended by the Client.

### PART D. REGARDING AGREEMENTS FOR CARRYING OUT MAINTENANCE OF EQUIPMENT

#### 41. Applicability and Maintenance Of Equipment/Maintenance Conditions

- 41.1. The conditions in Part D of the GTCD2017 shall apply to all legal relations between the Client and Asperitas regarding the carrying out of Activities and the contracting for Work without prejudice to the applicability of the provisions of Part A of the GTCD2017, which, as far as applicable, shall also apply to the carrying out of Activities and the contracting for Work.
- 41.2. The provisions of Part D of the GTCD2017 therefore complement the provisions of Part A of the GTCD2017. In the event that a provision from Part D of the GTCD2017 shall also apply and is in conflict in whole or in part with a provision from Part A of the GTCD2017, the provision under part D of the GTCD2017 shall prevail.

#### 42. Definition and Interpretation

- 42.1. In these Conditions, the following words and expression shall have the following meanings except where the context otherwise requires:
- 42.1.1. Additional charge means a charge payable by the Client for additional services outside the scope of the services in accordance with Asperitas' prevailing rates for such services including without limitation, the supply of spare parts and goods.
- 42.1.2. Maintenance Agreement means the maintenance agreement (including its Schedules) for the Services for Maintenance entered into by Asperitas and the Client, and includes these Conditions.
- 42.1.3. Conditions means these Maintenance Conditions as part of the GTCD2017 which are incorporated into and form part of the Maintenance Agreement.
- 42.1.4. Equipment means the equipment listed in the respective schedule to the Maintenance Agreement.
- 42.1.5. Fee means the fee payable for the Maintenance Services as specified in the Maintenance Agreement.
- 42.1.6. Services as set forth in this Part D means the maintenance and other services provided in respect of the Equipment detailed in the respective schedule to the Maintenance Agreement and as defined in these conditions.
- 42.1.7. Service time means the period set out in article 43 herein.
- 42.1.8. Site means the premises where the services are provided.
- 42.1.9. Term means the duration of the Agreement as set out in the Maintenance Agreement.

#### 43. Service time

- 43.1. The Services shall be performed within the Service Time, which shall (within Western Europe) be between 8.30 a.m. and 5.30 p.m. CET, Mondays to Fridays, Public Holidays excluded unless otherwise agreed in the respective schedule to the Maintenance Agreement. Response times for corrective maintenance services shall be as set out in the respective schedule to the Maintenance Agreement or as otherwise agreed In Writing between the Parties.

#### 44. Modification, changes and enhancements

- 44.1. During the term, Asperitas shall at their discretion undertake such modifications, changes or enhancements to the Equipment and/or implement any practice, procedure or measure, which is deemed by Asperitas to be necessary and/or to prevent or minimise damage to the Equipment.
- 44.2. Asperitas will before undertaking any such modification, change or enhancement etc. as mentioned in 44.1 above, explain to the Client, if Asperitas deems necessary, the need and cost (where applicable) of such modification, change or enhancement. The Client shall pay any additional charge for such modification, change or enhancement.

#### 45. Exclusions and additional services

- 45.1. The services do not include:
- 45.1.1. Repair of damage arising from the act, error, fault, neglect, misuse, improper operation or omission of the Client or its servants, agents, contractors or invitees or any person whether or not that person is under the control or direction or authority of the Client;
- 45.1.2. Repair of damage arising from changes, alterations, additions or modifications of the Equipment by a person other than Asperitas;
- 45.1.3. Repair of damage caused by incorrect power supply, failure of electrical power, air-conditioning, humidity control or any environmental factor;
- 45.1.4. Repair of damage caused by the operation of the Equipment other than in accordance with the specifications or otherwise than in accordance with the direction, instruction or recommendations of Asperitas or its personnel;
- 45.1.5. Repair of damage caused by the Client not having ensured the pre-requisites with regard to the proper functioning of the Equipment have been met fully, constant and accurately;
- 45.1.6. Repair of damage arising from the re-installation, moving or removing of the Equipment by a person other than Asperitas;
- 45.1.7. Repair of damage caused by any circumstances beyond Asperitas' reasonable control;
- 45.1.8. Furnishing or supplying maintenance of accessories, attachments, supplies, spare parts, consumables or items associated with the Equipment unless otherwise defined in article 45.2;
- 45.1.9. Transportation charges, whether for air, sea or land transport for services carried on within or outside The Netherlands;
- 45.1.10. Work performed outside Asperitas' service time;
- 45.1.11. The cost of any Equipment or part whether spare part, consumable or otherwise supplied, unless otherwise provided in the respective schedule to the Maintenance Agreement;
- 45.1.12. The upgrading of or retrofitting of improvements or major modification to the Equipment.

- 45.2. Asperitas may at the Client's option provide any of the services referred to in article 45.1 or any other services requested by the Client, at the relevant additional charge. Asperitas shall inform the Client of the associated additional charge, and the Client shall accept the additional charge In Writing before the services are performed. The additional charge shall be payable by the Client.

#### 46. Client's responsibilities

- 46.1. The Client shall undertake to release all Equipment which is being maintained by Asperitas from all operational demands when so requested to do so by Asperitas in order for Asperitas to perform the services. Alternatively, the Client shall ensure that Asperitas' personnel have full and safe access to the Equipment at all reasonable times for the purpose of providing the services. The Client shall also ensure that such access conforms to any specifications issued by Asperitas from time to time.
- 46.2. The Client will ensure that Asperitas' personnel or representatives are provided a safe and secure work environment at all times while they are on the site to enable work to be carried out.
- 46.3. The Client shall provide on request a suitably qualified or informed representative, agent or employee to accompany Asperitas' personnel when providing the Services or to render such assistance or to give such advice as will enable Asperitas' personnel to exercise unrestricted access to the site and the Equipment and otherwise to perform the services effectively.
- 46.4. The Client shall supply auxiliary facilities and services when requested by Asperitas as necessary for the provision of the Services. Where the Client does not provide the auxiliary facilities and services, Asperitas shall be entitled to procure such auxiliary facilities and services and seek full reimbursement from the Client provided Asperitas has given the Client written notice of the non-compliance and the Client has failed to remedy the non-compliance within the time specified in the notice. The auxiliary facilities and services shall include without limitation:
- 46.4.1. Adequate telephone/communications facilities;
- 46.4.2. Lighting for all work areas;
- 46.4.3. Main and auxiliary electrical power necessary for the operation of all equipment, capable of being isolated either by isolating switches, removal of fuses or other means to the reasonable satisfaction of Asperitas;
- 46.4.4. 240 volt, 50 cycle single phase at 3 pin general purpose outlets at suitable locations;
- 46.4.5. Suitable dry lockable storage space for the storage of machinery, equipment, materials and tools;
- 46.4.6. Those facilities and services mentioned in the prerequisites mentioned in the Agreement.
- 46.5. The Client shall upon Asperitas' request furnish to Asperitas sufficient information which, in Asperitas' reasonable opinion, will enable the services to be carried out forthwith and without interruption. The Client shall be responsible for and bear the cost of any modification to the scope of the services arising from any discrepancy, error or omission in any drawings, specification or other information supplied or approved by the Client.
- 46.6. All such assistance to be provided by the Client under this article 46 or in general shall be at the Client's sole cost and expense.
- 46.7. Nothing in this Agreement shall relieve the Client from its obligations to perform normal day to day maintenance on the Equipment as per the operator's manuals supplied by the manufacturer and/or Asperitas including but not restricted to normal cleaning procedures, checks and adjustments designed for operational use.
- 46.8. During the continuance of this Agreement, the Client shall not carry out or attempt to carry out modifications to, repair of, experiments on, or maintenance of the Equipment other than day to day maintenance and the Client shall not permit any other person except Asperitas' personnel or representatives to carry out such work unless prior written approval has first been obtained from Asperitas.
47. Replacement and spare parts
- 47.1. In the case of services for which an Additional Charge is payable by the Client for replacement of spare parts, title in such replacement or spare parts shall pass to the Client only upon full payment of the Additional Charge. Unless otherwise agreed In Writing between the Parties, risk of damage to or loss of replacement spare parts shall pass to the Client as soon as they are delivered to the Client's designated premises.
- 47.2. Where parts of the Equipment have been replaced by or upon the instruction, recommendation or direction of Asperitas or otherwise, title in the replaced parts will pass to Asperitas upon removal from the Equipment.

- 47.3. Asperitas may from time to time require the Client to purchase and store at the site such spare parts as Asperitas considers necessary for the provision of effective services.
- 47.4. Asperitas will not be liable for any failure or delay in providing the services where such failure or delay is the direct or indirect result of the failure of the Client to comply with clause 47.3.
- 47.5. Save as aforesaid, the property of and risk in the Equipment is not affected by the provisions contained in this Agreement.
- 47.6. Asperitas shall be entitled to adjustment of the fees and additional charges (to be mutually agreed In Writing) in the event of changes in law or engineering standards applicable to or affecting the Equipment and/or services after the execution of the Agreement.

#### 48. Maintenance Equipment

- 48.1. Asperitas shall provide all the necessary tools, Equipment, testing and diagnostic apparatus which Asperitas requires in order to carry out the service unless otherwise agreed.

#### 49. Client records & service reports

- 49.1. The Client shall keep such records relating to the use and performance of the Equipment as may be directed by Asperitas from time to time.
- 49.2. The Client shall permit Asperitas to have access to such records at all reasonable times, including all periods during which the services are being performed or preparations are being made for the services to be performed.

### PART E: RENTAL OF EQUIPMENT

#### 50. Applicability

- 50.1. Rental of Equipment: The conditions in Part E of the GTCD2017 shall apply to all legal relations between the Client and Asperitas regarding the carrying out of Activities and the contracting for Work without prejudice to the applicability of the provisions of Part A of the GTCD2017, which, as far as applicable, shall also apply to the rental of Equipment.
- 50.2. The provisions of Part E of the GTCD2017 therefore complement the provisions of Part A of the GTCD2017. In the event that a provision from Part E of the GTCD2017 shall also apply and is in conflict in whole or in part with a provision from Part A of the GTCD2017, the provision under part E of the GTCD2017 shall prevail.

#### 51. Equipment rental Agreement

- 51.1. The following conditions apply when Client rents Equipment from Asperitas. The Client shall pay the rental-fees and also pay other charges in accordance with this Agreement due upon return of Equipment, to the fullest extent allowed by law, including but not limited to:
- 51.1.1. charges for optional services, if any;
- 51.1.2. applicable taxes;
- 51.1.3. loss of, or damage or repair to the Equipment, loss of use, diminution of the Equipment's value caused by damage to it or repair to it, and costs to enforce such charges including administrative fees for processing the claim and legal expenses;
- 51.1.4. a charge of € 250 (two hundred fifty euros) per day for late return of the Equipment or the highest amount allowable under law;
- 51.1.5. unless due to the fault of Asperitas, all fines, penalties, court costs and other expenses relating to the Equipment assessed against Asperitas or the Equipment during the rental Term;
- 51.1.6. all expenses Asperitas incurs due to the Client's failure to return the Equipment including costs in locating and recovering the Equipment;
- 51.1.7. all costs incurred to collect unpaid monies due; and
- 51.1.8. € 250 (two hundred fifty euros) or the maximum amount allowed by law, whichever is greater, for making payment with insufficient funds.

#### 52. Security deposit

- 52.1. In addition to the fees listed in 51.1, the Client shall pay a deposit as indicated in the Agreement at the time the Agreement is signed. Asperitas may use the deposit to cover any amounts due under this Agreement.

#### 53. Location of Equipment

- 53.1. During the term, Equipment shall be located at the premises from the Client, unless expressly agreed otherwise In Writing by Asperitas.

#### 54. Care of Equipment

- 54.1. Equipment can only be used in a careful and proper manner and shall not be used in any way that is inconsistent with Asperitas' instructions or manuals.

#### 55. Repair and alterations

- 55.1. The costs of all repairs made during the term shall be paid by the Client, including but not limited to labor, material, parts and other items. Equipment shall not be serviced or repaired and parts and accessories shall not be replaced without Asperitas' prior consent.

#### 56. Insurance

- 56.1. The Client must carry insurance satisfactory to Asperitas equal to the value of the Equipment to ensure its full replacement, unless agreed otherwise In Writing by Asperitas.

#### 57. Restrictions on use

- 57.1. The Client shall not:
- 57.1.1. permit the Equipment to be used by any person who is not authorised to use such Equipment;
- 57.1.2. operate or use the Equipment or permit it to be operated or used in violation of law;
- 57.1.3. operate or use the Equipment or permit it to be operated or used to commit a violation of law; and/or
- 57.1.4. operate, use, maintain or store the Equipment in a manner likely to cause damage to the Equipment.

#### 58. Loss or Damage

- 58.1. The Client shall alert Asperitas to any damage to the Equipment. The Client shall be responsible for any loss or damage to Equipment and loss of use, diminution of the Equipment's value caused by damage to it or repair to it and missing Equipment.

#### 59. Condition of Equipment

- 59.1. The Client acknowledges that the Client has examined the Equipment and that it is in good condition except as otherwise specified in the checklist. Asperitas makes no warranty, express or implied, course of dealing, course of performance, usage of trade or otherwise, and expressly excludes and disclaims all warranties and representations of any kind, including any warranties of merchantability, fitness for a particular purpose, title and non-infringement.

#### 60. Return of Equipment

- 60.1. The Client shall return Equipment on the rental end date specified in the Agreement in the same condition as the Client received it, except for normal wear and tear. The Client shall return the Equipment to the agreed return location. If Equipment is not returned on said date, Asperitas reserves the right to take any action necessary to regain possession of the Equipment.

#### 61. Termination

- 61.1. The rental shall terminate on the rental end date specified in the Agreement. Asperitas reserves the right to terminate this Agreement earlier upon notice to the Client.

#### 62. Indemnification and liability

- 62.1. The Client shall indemnify, defend and hold harmless Asperitas from and against any claim, demand, cause of action, loss or liability (including attorney's fees and expenses of litigation) for any property damage or personal injury arising from the Client's use of Equipment by any cause, except to the extent caused by Asperitas' gross negligence or willful misconduct. The provisions of this article shall survive the termination of this Agreement with respect to any claims or liability accruing before such termination. In no event shall Asperitas be liable for any indirect, special or consequential loss or damages arising from the Client's use of equipment, including but not limited to loss profits and loss revenue, even if informed of the possibility of such damages.

#### 63. Ownership

- 63.1. Asperitas shall at all times retain ownership and title to the Equipment. The Client shall immediately notify Asperitas in the event Equipment is levied, has a lien attached or is threatened with seizure. The Client shall indemnify and hold Asperitas harmless against all loss and damages caused by such action. Equipment shall be deemed at all times to be personal property, whether or not it may be attached to any other property.

#### 64. Waiver

- 64.1. No failure of Asperitas to exercise or enforce any of its rights under this Agreement shall act as a waiver of subsequent breaches; and the waiver of any breach shall not act as a waiver of subsequent breaches. Asperitas' acceptance of payment with knowledge of a default by the Client shall not constitute a waiver of any breach.

## 2. ASPERITAS COMPANY

**ASPERITAS IS A CLEAN-TECH COMPANY** focused on greening the datacentre industry by introducing Immersed Computing®.

**SINCE 2014** Asperitas has worked on validating and developing Immersed Computing® as a unique approach to the datacentre industry. Building on existing liquid immersion cooling technologies by adding integration of power and network components, improving cooling physics with a strong focus on design and engineering for usability, Asperitas has come up with a complete and integrated solution which can be effectively utilised in most, if not all situations.

**ASPERITAS DEVELOPMENT PARTNERS** include University of Leeds, Aircraft Development and Systems Engineering (ADSE), Super Micro, Total, Schleifenbauer and Brink Industrial. Asperitas is furthermore recognised and supported by the Netherlands Enterprise Agency as a promising new Cleantech company.



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