

General Terms And Conditions

MOTION DYNAMICS B.V.

1 DEFINITIONS AND INTERPRETATION

In these General Terms and Conditions, the following terms shall have the following meanings:

1. **MOTION DYNAMICS:** MOTION DYNAMICS B.V., registered at (2401MM) Alphen aan den Rijn at Nikkelweg 55, registered in the trade register under number 92873022.
2. **Client:** any legal entity or natural person acting in the exercise of a profession or business with whom MOTION DYNAMICS enters into an **Agreement** or is in negotiation;
3. **Agreement:** any legal relationship established between MOTION DYNAMICS and **Client**, including purchase agreements, cooperation agreements, development assignments, engineering assignments, consultancy assignments, maintenance agreements, **SLA**'s and framework agreements, as well as all related quotations, amendments and supplements;
4. **Products:** all goods to be delivered or delivered by MOTION DYNAMICS to **Client**, including hardware, machines, equipment, 3D printers, parts, **Modules**, prototypes, test setups, documentation and physical development results;
5. **Modules:** all modular (sub)systems and interchangeable components of the **Producten** that can be individually replaced, maintained or exchanged, as further specified in the **Agreement**, technical documentation or product specifications;
6. **Services:** all work to be performed or performed by MOTION DYNAMICS for **Client**, including:
 - (a) Engineering (electrical engineering, mechanical engineering, software engineering);
 - (b) Design, development and prototyping;
 - (c) Consultancy, advice and process optimization;
 - (d) Installation, configuration, commissioning and integration;
 - (e) Training, knowledge transfer and guidance;
 - (f) Maintenance, support, repair and service;
 - (g) Project management and technical support;
7. **Software:** all software, firmware, applications, configurations, scripts, APIs, interfaces and associated documentation developed, delivered or made available by MOTION DYNAMICS, regardless of distribution method (embedded, on-premise, SaaS/cloud);
8. **Deliverables:** all results to be delivered as agreed in the **Agreement**, including **Producten**, **Software**, designs, drawings, 3D models, CAD files, reports, calculations, technical documentation, test results, prototypes and other (intermediate) results;
9. **Intellectual Property Rights (IP):** all intellectual and industrial property rights, including copyrights, database rights, patent rights, design rights, trademark rights, trade name rights and know-how;
10. **Background IP:** all **IP** rights that a Party already owned prior to the commencement of the **Agreement**, as well as all **IP** rights that a Party independently develops outside the scope of the **Agreement**;

11. **Foreground IP:** all **IP** rights arising during the performance of the **Agreement** in relation to the **Deliverables**;
12. **Confidential Information:** all information of a Party (regardless of form or medium) that has been designated as confidential or that the receiving Party should reasonably understand to be confidential, including technical data, designs, specifications, source code, prices, customer data, business processes and strategies;
13. **SLA:** a Service Level Agreement agreed between the Parties specifying service levels, response times, availability, maintenance and support;
14. **Business Day:** Monday through Friday, excluding official Dutch public holidays;
15. **Force Majeure:** a circumstance as referred to in Article 13 of these General Terms and Conditions;
16. **Delivery Date:** the moment of delivery at the agreed delivery location in accordance with the agreed Incoterm;
17. **Start Date:** the date on which (i) the order has been confirmed in writing by MOTION DYNAMICS and (ii) the agreed advance payment (if applicable) has been irrevocably credited to the bank account of MOTION DYNAMICS; the **Start Date** is the later of these two dates;

2 APPLICABILITY

1. These General Terms and Conditions apply to all offers, quotations, legal relationships and **Agreements** in which MOTION DYNAMICS **Producten, Software** en/of **Diensten** delivers or performs, unless the Parties have expressly agreed otherwise in writing;
2. General terms and conditions of the **Klant** shall not apply, unless MOTION DYNAMICS has expressly accepted them in writing;
3. Deviations from these General Terms and Conditions shall only be binding if and insofar as they have been expressly confirmed in writing by an authorized representative of MOTION DYNAMICS;
4. If a provision of these General Terms and Conditions is void or annulled, the remaining provisions shall remain in full force. The Parties shall agree by mutual consultation on a replacement provision that approximates the intention of the original provision as closely as possible;
5. **Document hierarchy.** In the event of conflict between documents, the following order of precedence shall apply (from specific to general):
 - (a) Individual project documents signed by the Parties (Statement of Work, addendum, change order) for the relevant project;
 - (b) Individual cooperation agreement signed by the Parties with the **Klant** (if applicable);
 - (c) Individual delivery conditions signed by the Parties with the **Klant** (if applicable);
 - (d) Individueel door Partijen ondertekende **SLA** met de **Klant** (if applicable);
 - (e) Quotation and/or order confirmation for the relevant assignment;
 - (f) These General Terms and Conditions;
 - (g) Other documentation and policies used by MOTION DYNAMICS;
6. **Precedence of contract documents and document hierarchy:** If (i) the **Agreements** or any individual contract document signed by the Parties (including a cooperation agreement, delivery conditions and/or **SLA**) contains its own document hierarchy or precedence rules, or (ii) such a contract document contains provisions that deviate from these General Terms and Conditions, then that contract document (and the document hierarchy/precedence rules contained therein) shall prevail over these General Terms and Conditions;

7. These General Terms and Conditions apply to all **Agreementen**, unless and insofar as expressly agreed otherwise in writing in the documents referred to in paragraphs 5a t/m 5e. For matters not regulated in those documents, these General Terms and Conditions shall apply as supplementary rules;
8. These General Terms and Conditions shall also apply for the benefit of (legal) persons engaged by MOTION DYNAMICS in the performance of the **Agreement**;
9. If MOTION DYNAMICS does not always require strict compliance with these General Terms and Conditions, this does not mean that the provisions thereof do not apply, or that MOTION DYNAMICS would forfeit any right to require strict compliance with the provisions of these General Terms and Conditions in other cases;

3 OFFERS AND FORMATION OF THE AGREEMENT

1. All quotations, proposals and price indications of MOTION DYNAMICS are without obligation, unless stated otherwise in writing, and are valid until the validity date stated in the quotation. In the absence of a validity date, a validity period of thirty (30) days shall apply;
2. An **Agreement** is formed at the moment that:
 - (a) the **Client** has accepted a quotation issued by MOTION DYNAMICS in writing (including by e-mail); or
 - (b) MOTION DYNAMICS has confirmed the order placed by **Client** in writing (including by e-mail); or
 - (c) MOTION DYNAMICS has actually commenced the performance of the **Agreement**;
3. Oral commitments, arrangements or amendments shall only be binding after they have been confirmed in writing by an authorized representative of MOTION DYNAMICS;
4. Arrangements with or statements by subordinates of MOTION DYNAMICS (including but not limited to support, logistics and technical staff) shall only bind MOTION DYNAMICS if and insofar as they have been confirmed in writing by an authorized representative;
5. If the acceptance by the **Client** (even on minor points) deviates from the quotation of MOTION DYNAMICS, the **Agreement** shall only be formed after MOTION DYNAMICS has confirmed such deviating acceptance in writing;
6. MOTION DYNAMICS cannot be held to its quotations or offers if the **Client** could reasonably have understood that the quotations or offers, or any part thereof, contained an obvious error or writing mistake;
7. **Security and advance payment.** MOTION DYNAMICS is entitled, at or after entering into the **Agreement** to require security of payment or to stipulate (partial) advance payment, for example in the form of a down payment, bank guarantee or other appropriate security, and to suspend performance as long as such security has not been provided;
8. **Creditworthiness.** MOTION DYNAMICS is entitled both during and prior to entering into an **Agreement** to conduct an investigation into the creditworthiness of the **Klant**. If the creditworthiness of the **Klant** gives cause thereto, MOTION DYNAMICS may decide not to enter into an **Agreement** with the **Client** or to require additional security from the **Client** for the fulfillment of the obligations of the **Client** under the **Agreement**;
9. **Preliminary investigation.** MOTION DYNAMICS advises the **Client** to commission a preliminary investigation if:

- (a) the **Client** cannot provide a program of requirements or specifications that can serve as a sufficiently clear starting point for MOTION DYNAMICS to commence the work;
- (b) it is insufficiently clear to MOTION DYNAMICS, also having regard to the provisions of Article 4, whether fulfillment of the assignment is possible;
- (c) in all other cases where MOTION DYNAMICS considers this desirable with a view to proper fulfillment of the assignment;

If the **Client** agrees with the advice to conduct a preliminary investigation, MOTION DYNAMICS shall prepare a written proposal for a preliminary investigation in consultation with the **Client**. If MOTION DYNAMICS concludes on the basis of a preliminary investigation that fulfillment of the intended assignment is not possible or only possible under modified conditions, MOTION DYNAMICS shall inform the **Client** thereof in writing. In that case, the Parties are not obliged to enter into the main assignment;

4 PERFORMANCE OF THE AGREEMENT

1. MOTION DYNAMICS shall perform the **Agreement** to the best of its knowledge and ability, taking into account the state of the art and the requirements of good workmanship, in accordance with the specifications and planning set out in the **Agreement** ;
2. All work and **Diensten** to be performed by MOTION DYNAMICS are **obligations of effort**, unless the **Agreement** expressly provides for a **result obligation** for specific **Deliverables**;
3. MOTION DYNAMICS is entitled to engage third parties in the performance. The engagement of third parties shall be at the expense of MOTION DYNAMICS, unless agreed otherwise;
4. The **Client** shall provide in a timely manner and free of charge all data, specifications, access, facilities and cooperation that MOTION DYNAMICS reasonably needs for proper performance of the **Agreement**;
5. If information required for performance is not provided in a timely manner, not completely or incorrectly, or if the **Client** otherwise culpably fails in its obligations, MOTION DYNAMICS shall have the right to:
 - (a) suspend performance;
 - (b) adjust the planning and delivery times; and/or
 - (c) charge the resulting additional costs to the **Client** at the standard rates of MOTION DYNAMICS;
6. If the **Agreement** is performed in phases, MOTION DYNAMICS may suspend performance of a subsequent phase until the **Client** has approved the results of the preceding phase in writing and has fulfilled any associated payment obligations;
7. Changes to the **Agreement** (change requests) shall only be implemented if the Parties have reached written agreement thereon, including regarding the consequences for scope, planning, prices and liability;
8. **Aesthetic value**. In assessing the proper fulfillment of the **Agreement** aesthetic value shall not be taken into account, without prejudice to the obligation to meet reasonable requirements and the agreed specifications. This paragraph applies in particular to design and development assignments where subjective design plays a role;
9. An agreed term for the completion of certain work or delivery of certain goods shall never be a strict deadline. In the event of exceeding a term, the **Client** must give MOTION DYNAMICS written notice of default. MOTION DYNAMICS must be given a reasonable period to still fulfill its obligations;

10. **Medical and critical applications.** MOTION DYNAMICS delivers **Products** and **Services** for industrial production purposes. Unless expressly agreed otherwise in writing, the **Producten en Diensten** are not specifically designed, tested or certified for medical applications, nor for use in life-supporting or safety-critical systems. The **Client** is fully responsible for ensuring that:
- (a) the end products manufactured with the **Products** comply with all applicable legal requirements, standards and certifications (including, but not limited to, medical device regulations such as the MDR);
 - (b) adequate quality controls and validations are performed on the end products before they are placed on the market or made available to end users;
 - (c) end users are correctly informed about the use, limitations and risks of the end products;
 - (d) the necessary insurance is taken out for product liability with respect to the end products;

MOTION DYNAMICS is not responsible for the suitability, safety or quality of the end products manufactured by the **Client** with the aid of the **Products**;

5 DELIVERY, COMPLETION AND ACCEPTANCE

Products

1. Unless agreed otherwise, delivery of **Producten Ex Works (EXW, Incoterms 2020)** location MOTION DYNAMICS in Alphen aan den Rijn. The risk of loss or damage to the **Producten** shall pass to the **Client** at the moment the **Producten** have been made available to the **Client** at that location;
2. If the Parties have agreed in writing that MOTION DYNAMICS shall arrange (the organization of) transport, delivery shall take place at the agreed delivery location and the risk shall pass to the **Client** at the moment of delivery there. Any transport and delivery costs shall be invoiced separately by MOTION DYNAMICS to the **Client**, unless agreed otherwise;
3. Delivery times and (batch) delivery schedules are stated in the quotation and/or order confirmation. Unless the Parties have expressly agreed on a **guaranteed delivery time**, delivery times shall be considered **target dates**;
4. If a guaranteed delivery time has been agreed, it shall commence on the **Startdatum** as defined in Article 1 item 17 (generally: the date on which both the order has been confirmed in writing and the agreed down payment has been received by MOTION DYNAMICS);
5. The **Client** is obliged to inspect the delivered **Producten** as soon as possible upon delivery. **Visible defects** and transport damage must be **within five (5) business days after delivery** reported in writing to MOTION DYNAMICS, accompanied by relevant documentation (such as photographs). **Hidden defects** must be reported in writing **within thirty (30) days after discovery**. The notification must contain as detailed a description of the defect as possible, so that MOTION DYNAMICS is able to respond adequately;
6. If the **Client** does not complain within the period referred to in paragraph 5 , the delivery shall be deemed to have been accepted insofar as visible defects are concerned. This shall not affect claims under any warranty, insofar as contractually agreed;
7. If the **Client** does not or does not timely take delivery of the **Producten** , MOTION DYNAMICS is entitled to store the **Producten** at the expense and risk of the **Client**. All associated (additional) costs, including storage, insurance and handling costs, shall be borne by the **Klant**;
8. Use of the **Producten** by the **Client** shall in principle constitute tacit acceptance, subject to pre-agreed written acceptance criteria or procedures;

9. **Delivery penalties.** Any delivery penalties or contractual fines for exceeding guaranteed delivery times shall only be due if and insofar as expressly agreed in writing in the **Agreement** and/or applicable delivery conditions. Such penalties shall constitute pre-determined and exclusive compensation for delivery delay and shall be limited to a percentage of the invoice amount of the relevant (partial) delivery, in accordance with the **Agreement**;
10. No delivery penalty shall be due insofar as delay is the result of (i) **overmacht**, (ii) changes requested by **Client** after order confirmation, (iii) non-timely payment of agreed installments, or (iv) refusal/delay in acceptance or receipt by **Klant**;

Services and Deliverables

1. For **Services** and other **Deliverables** (such as designs, reports, **software**, prototypes), unless agreed otherwise, completion shall take place at the moment MOTION DYNAMICS makes the **Deliverables** available to the **Client** (for example by digital transmission, upload to a platform, or physical transfer);
2. If the Parties have expressly agreed on an acceptance procedure, the **Client** shall test the **Deliverables** within the agreed acceptance period (in the absence thereof: **fourteen (14) days after completion**) against the acceptance criteria set out in the **Agreement** ;
3. The **Client** shall accept the **Deliverables** in writing, or shall indicate in writing and with reasons within the acceptance period which parts do not meet the agreed acceptance criteria. Defects of minor importance cannot suspend acceptance;
4. If the **Client** does not respond within the acceptance period, or if the **Client** puts the **Deliverables** into use or production, the **Deliverables** shall be deemed accepted;
5. MOTION DYNAMICS has the right to investigate or have investigated a complaint. The **Client** shall provide MOTION DYNAMICS with all cooperation in this regard, including access to locations and systems insofar as reasonably necessary;

6 PRICES AND PAYMENT

1. All prices are in euros, excluding VAT and excluding other government levies or taxes, unless expressly stated otherwise;
2. **For delivery of Producten**, unless agreed otherwise:
 - (a) 50% of the invoice amount (excl. VAT) shall be invoiced upon order placement;
 - (b) 50% of the invoice amount (excl. VAT) shall be invoiced upon delivery (and therefore not only upon placement/installation at the end user);
3. **For Diensten and development assignments**, unless agreed otherwise, one of the following invoicing methods shall apply (as stated in the **Agreement**):
 - (a) Fixed price per milestone (as agreed in the **Agreement**);
 - (b) Post-calculation based on hours spent, invoiced per calendar month or per phase, at the hourly rates of MOTION DYNAMICS applicable at that time; or
 - (c) Subscription or periodic fee (e.g. for **SLA** or ongoing support);
4. Insofar as not otherwise agreed, the applicable **hourly rates** of MOTION DYNAMICS shall apply as stated in:
 - (a) the quotation;
 - (b) the individual **Agreement**; or

- (c) the current rate list of MOTION DYNAMICS as published on the website or provided upon request to the **Klant**;

In the absence of an agreed rate, the standard rates of MOTION DYNAMICS applicable at that time shall apply;

5. Unless agreed otherwise, the payment term shall be **thirty (30) days after the invoice date**. MOTION DYNAMICS is entitled to invoice periodically;
6. If the **Client** disputes an invoice in whole or in part, it must notify MOTION DYNAMICS in writing and with reasons **within fourteen (14) days after the invoice date**. Objections to an invoice shall not suspend the payment obligation for the undisputed part. The undisputed portion must be paid within the regular payment term;
7. Upon exceeding the payment term, the **Client** shall be in default by operation of law and shall owe:
 - (a) statutory commercial interest on the outstanding amount from the moment of default;
 - (b) reasonable extrajudicial collection costs in accordance with the law (calculated pursuant to the Decree on compensation for extrajudicial collection costs). If MOTION DYNAMICS has incurred higher collection costs that were reasonably necessary, the actual costs incurred shall be eligible for compensation;
8. MOTION DYNAMICS is entitled to set off payments by the **Client** against costs, then against interest due and finally against the principal and accruing interest;
9. MOTION DYNAMICS may, without being in default, refuse an offer of payment if the **Client** designates a different order for the allocation of the payment. MOTION DYNAMICS may refuse full repayment of the principal if the accrued and accruing interest and collection costs are not also paid;
10. **Set-off prohibition.** The **Client** shall never be entitled to set off amounts owed to MOTION DYNAMICS against any claim it may have against MOTION DYNAMICS;
11. MOTION DYNAMICS is entitled in the event of payment arrears to (partially) suspend performance of the **Overeen-komst** and/or to cease further deliveries and **Diensten** , without thereby becoming liable for damages;
12. MOTION DYNAMICS is entitled to annually index its rates by a maximum of the consumer price index (CPI) percentage published by Statistics Netherlands (CBS), with a notice period of thirty (30) days;
13. All **additional work and extra work** not included in the **Agreement** zijn inbegrepen, worden – na voorafgaande schriftelijke opdracht of akkoord van de **Klant** – op basis van nacalculatie in rekening gebracht tegen de dan geldende uurtarieven van MOTION DYNAMICS;
14. Travel and accommodation costs, material costs and other directly attributable costs shall only be charged if and insofar as this has been agreed in writing in advance;

7 RETENTION OF TITLE

1. All **Agreement Products** delivered by MOTION DYNAMICS in the context of the **Agreement** shall remain the property of MOTION DYNAMICS until the **Client** has fully fulfilled all obligations under all **Agreementen** entered into with MOTION DYNAMICS, including:
 - (a) payment of the purchase price of the **Producten**;
 - (b) payment for work performed or **Diensten**;
 - (c) payment of claims due to failure in performance by the **Client**, such as damages, extrajudicial collection costs and interest;

2. The 1 delivered by MOTION DYNAMICS and falling under the retention of title of paragraph **Producten** may not be resold, unless the resale is part of the normal business activities of the **Klant**. The delivered **Producten** mogen echter nimmer als betaalmiddel worden gebruikt. De **Klant** is niet bevoegd de onder eigendomsvoorbehoud delivered by MOTION DYNAMICS and falling under the retention of title of paragraph **Producten** subject to retention of title. This provision has proprietary effect;
3. The **Client** must always do everything that may reasonably be expected of it to safeguard the property rights of MOTION DYNAMICS;
4. The **Client** must immediately inform MOTION DYNAMICS if third parties seize the **Producten** delivered under retention of title or wish to establish or assert rights thereon;
5. The **Producten** delivered under retention of title shall be held by the **Client** at its own expense and risk. The **Client** undertakes to insure and keep insured the **Producten** delivered under retention of title against fire, explosion, water and theft damage and to make the policy of this insurance available for inspection to MOTION DYNAMICS upon first request. In the event of any insurance payment, MOTION DYNAMICS shall be entitled to such proceeds. The **Client** hereby assigns in advance any claim against its insurer to MOTION DYNAMICS, which assignment MOTION DYNAMICS hereby accepts. The **Client** undertakes in advance to cooperate in everything that may be necessary or desirable in this regard on behalf of MOTION DYNAMICS;
6. If MOTION DYNAMICS wishes to exercise its property rights referred to in this article, the **Client** gives in advance unconditional and irrevocable permission to MOTION DYNAMICS and third parties designated by MOTION DYNAMICS to enter all premises where the property of MOTION DYNAMICS is located and to repossess such goods;

8 SERVICE LEVELS AND SUPPORT

1. If the Parties have agreed on a **SLA** , the service levels, response times, repair terms, availability agreements, incident classifications and any service credits specified therein shall apply as **lex specialis** for all service, support and maintenance activities;
2. In the event of conflict between these General Terms and Conditions and an applicable **SLA** with respect to service, support and maintenance obligations, the **SLA** shall prevail as the most specific regulation;
3. Without a **SLA** , all service and support activities provided by MOTION DYNAMICS are **obligations of effort** without guaranteed response times or availability, and shall be performed upon request at the then applicable rates of MOTION DYNAMICS;
4. Service credits and/or other contractual remedies in the **SLA of Agreement** shall constitute the sole and exclusive compensation for failure to meet agreed service levels or availability thresholds, except in cases of intent or deliberate recklessness on the part of MOTION DYNAMICS;
5. The fulfillment of service levels is also dependent on the timely and correct cooperation of the **Client**, including: compliance with prescribed maintenance schedules, correct and timely incident reports, access to systems and locations, and compliance with technical instructions;

9 INTELLECTUAL PROPERTY

General

1. All **Intellectual Property Rights** to **Producten**, **Software**, designs, drawings, documentation, models, prototypes and other materials developed or made available by MOTION DYNAMICS shall vest in MOTION DYNAMICS and/or its licensors, unless expressly agreed otherwise in writing in the documents referred to in Article 2 lid 5 onder 5a t/m 5d;

2. The **Client** shall only obtain the use rights described in the **Agreement** for its own internal business purposes. All rights not expressly granted are reserved to MOTION DYNAMICS;
3. The **Client** is not permitted to **Producten, Software** of **Deliverables** copy, modify, reverse engineer, decompile, rent, lease, sublicense or otherwise exploit, except insofar as mandatory law permits this or MOTION DYNAMICS has given prior written consent;
4. The **Client** is not entitled to remove or modify indications regarding the confidential nature or regarding copyrights, trademarks, trade names or other intellectual property rights from the **Producten, Software** or documentation;

Background IP

Each Party retains all **Background IP**. MOTION DYNAMICS grants the **Client** a non-exclusive, non-transferable, non-sublicensable right of use to its **Background IP** solely insofar as necessary for the use of the **Deliverables** in accordance with the **Agreement**;

Foreground IP

1. Unless expressly agreed otherwise in the **Agreement** or the documents referred to in Article 2 lid 5 onder 5a t/m 5d, , all **Foreground IP-rechten** shall vest in MOTION DYNAMICS;
2. If the Parties in the **Agreement** or the documents referred to in Article 2 lid 5 onder 5a t/m 5d have expressly agreed a different allocation of **Foreground IP** zijn overeengekomen (bijvoorbeeld: “Klant-specifieke ontwerpen komen toe aan Klant; generieke, herbruikbare platform-ontwikkelingen komen toe aan MOTION DYNAMICS”), that specific arrangement shall apply as *lex specialis* and shall prevail over this provision;
3. Insofar as **Foreground IP** vests in the **Client**, the **Client** grants MOTION DYNAMICS a non-exclusive, perpetual, royalty-free, sublicensable license to use that **Foreground IP** for:
 - (a) fulfilling its obligations under the **Agreement**;
 - (b) the generic further development of its own products and services, provided that no **Vertrouwelijke Informatie** van de **Klant** is used or disclosed;
4. Insofar as in de **Producten** of **Software** use is made of open-source components, the applicable open-source licenses shall apply. Nothing in these General Terms and Conditions restricts MOTION DYNAMICS in the use of such open-source components for other products and applications, provided that no **Vertrouwelijke Informatie** or Client-specific configurations of the **Client** are reused;

Indemnification for Third-Party IP Infringement

1. MOTION DYNAMICS shall indemnify the **Client** against claims of third parties alleging that **Products, Software** or **Deliverables** delivered by MOTION DYNAMICS infringe the intellectual property rights of such third party applicable in the Netherlands, provided that the **Client** promptly informs MOTION DYNAMICS in writing of the existence and content of the claim and provides full cooperation, including providing the necessary powers of attorney, information and cooperation to contest the claim in the name of the **Client** if necessary;
2. MOTION DYNAMICS shall in that case be entitled, at its own discretion, to:
 - (a) acquire the right to continue use;
 - (b) the relevant **Producten** of **Software** zodanig aan te passen dat the infringement is no longer made; or
 - (c) the relevant **Producten** of **Software** with non-infringing alternatives with comparable functionality;

3. If none of the options in paragraph 2 are reasonably feasible, MOTION DYNAMICS may **Agreement** (partially) terminate the **Agreement** with reimbursement of a reasonable fee based on usage time, without further liability for lost profits or consequential damages;
4. This indemnification shall not apply if the infringement is the result of:
 - (a) adjustments or modifications by **Client** or third parties without the consent of MOTION DYNAMICS;
 - (b) use of de **Producten** of **Software** in combinatie met niet door MOTION DYNAMICS goedgekeurde hard- of software; or
 - (c) gebruik in violation of the **Agreement** of instructies van MOTION DYNAMICS;
5. The source code of the **Software** and the technical documentation produced during the development of the **Software** shall not be made available to the **Client**, unless expressly agreed otherwise in writing;

10 CONFIDENTIALITY AND PERSONAL DATA

Confidentiality

1. The Parties shall treat **Vertrouwelijke Informatie** as strictly confidential and shall use it solely for the performance of the **Agreement**;
2. **Vertrouwelijke Informatie** shall only be shared with employees/advisors who reasonably need it, subject to an equivalent confidentiality obligation;
3. The confidentiality obligation shall not apply to information that:
 - (a) is already public without breach of this **Agreement**;
 - (b) rechtmatig van een derde is verkregen zonder geheimhoudingsplicht; or
 - (c) must be provided pursuant to law or court order, provided that the disclosing Party informs in advance where possible;
4. The confidentiality obligation shall remain in force **three (3) years after termination** of the **Agreement** , unless the Parties agree otherwise in writing;

Personal Data

1. Insofar as MOTION DYNAMICS persoonsgegevens verwerkt in het kader van de **Agreement**, this shall be done in accordance with the General Data Protection Regulation (GDPR) and other applicable legislation;
2. If MOTION DYNAMICS processes personal data as a processor within the meaning of the GDPR on behalf of the **Client** (controller), the Parties shall enter into a separate processing agreement in accordance with Article 28 GDPR;

11 LIABILITY AND INDEMNIFICATION

Limitation of Liability

1. The total liability of MOTION DYNAMICS under the **Agreement**, regardless of legal basis, shall be limited per calendar year to the lower of the following amounts:
 - (a) het bedrag dat in het betreffende geval door de aansprakelijkheidsverzekering van MOTION DYNAMICS wordt uitbetaald, vermeerderd met het eigen risico dat MOTION DYNAMICS uit hoofde van die verzekering draagt; or

- (b) a total amount of maximum **€ 1.000.000** (one million euros) per calendar year for all events combined;
- 2. Indien en voor zover om welke reden dan ook geen uitkering krachtens de aansprakelijkheidsverzekering plaatsvindt, is de totale aansprakelijkheid van MOTION DYNAMICS per kalenderjaar beperkt tot a total amount of maximum **€ 1.000.000** (één miljoen euro), regardless of the number of events, claims or **Agreementen**;
- 3. The liability of MOTION DYNAMICS shall in all cases be limited to **direct damage**. Direct damage shall exclusively mean:
 - (a) reasonable costs for determining the cause and extent of the damage, insofar as these relate to damage within the meaning of this article;
 - (b) reasonable costs incurred to make the defective performance of MOTION DYNAMICS conform to the **Overeen-komst** , insofar as these can be attributed to MOTION DYNAMICS;
 - (c) reasonable costs incurred to prevent or mitigate damage, insofar as the **Client** demonstrates that these costs have led to mitigation of direct damage as referred to in these General Terms and Conditions;
- 4. MOTION DYNAMICS shall never be liable for **indirect damage**, including but not limited to consequential damage, lost profits, missed savings, reduced goodwill, damage due to business stagnation, damage resulting from claims of customers of the **Client**, and damage related to the use of goods, materials, **Software** or **Services** of third parties prescribed by the **Client**;
- 5. The limitations set out in this article shall cease to apply if and insofar as the damage is the result of **intent or deliberate recklessness** of MOTION DYNAMICS or its management;

Limitation Period

- 1. Any right to compensation against MOTION DYNAMICS shall in any event expire **twelve (12) months** after the event from which the damage directly or indirectly arose, unless the **Client** has instituted legal proceedings within this period;

Indemnification by Client

- 1. The **Client** shall indemnify MOTION DYNAMICS against all claims of third parties related to:
 - (a) data, materials or instructions provided by the **Client**;
 - (b) use of **Producten, Software** of **Diensten** in violation of the **Agreement** or laws and regulations;
 - (c) schending van intellectuele eigendomsrechten van derden door use of door de **Klant** ter beschikking gestelde informatie of materialen;
 - (d) defects, shortcomings or damage with respect to end products that the **Client** has manufactured, processed or traded with the aid of the **Producten, Software** of **Diensten** van MOTION DYNAMICS, including but not limited to product liability, claims from end users, patients, consumers or other third parties with respect to such end products;
 - (e) the failure of end products manufactured by the **Client** to comply with applicable laws and regulations, standards, certification requirements or safety requirements;
 - (f) defects in end products resulting from incorrect material selection, incorrect print parameters, incorrect production process, insufficient quality control, or other acts or omissions of the **Client** or third parties engaged by the **Client**;
- 2. If MOTION DYNAMICS is held liable by third parties in this regard, the **Client** is obliged to assist MOTION DYNAMICS both out of court and in court and to immediately do everything that may be expected of it in such case. Should the **Client** fail to take adequate measures, MOTION DYNAMICS is entitled, without notice of default, to proceed itself. All costs and damage on the part of MOTION DYNAMICS and third parties arising therefrom shall be entirely at the expense and risk of the **Klant**;

12 WARRANTY

1. MOTION DYNAMICS warrants that the delivered **Producten** en **Software** upon delivery comply with the **Agreement** specifications set out in writing and are free from material and manufacturing defects under normal use in the Netherlands;
2. Unless agreed otherwise, the warranty period shall be **twelve (12) months** after delivery. If the warranty of MOTION DYNAMICS relates to a **Product** produced by a third party, the warranty shall be limited to the warranty provided by that manufacturer, unless agreed otherwise;
3. The warranty shall not apply to:
 - (a) normal wear and tear and consumable parts (such as nozzles, heat breaks, belts, kapton etc.);
 - (b) defects resulting from incorrect or inexperienced use, abnormal operating conditions, neglect or careless maintenance by the **Klant**;
 - (c) damage from external influences (fire, water, lightning, power failure, etc.);
 - (d) unauthorized adjustments, modifications or repairs by the **Client** or third parties without prior written consent of MOTION DYNAMICS;
 - (e) defects that have not been reported within thirty (30) days after discovery;
 - (f) defects arising from circumstances beyond the control of MOTION DYNAMICS, such as extreme weather conditions;
4. Warranty on **Services** performed by MOTION DYNAMICS shall only comprise performing work to the best of its knowledge and ability in accordance with the state of the art. MOTION DYNAMICS does not guarantee the achievement of a particular result, unless a result obligation has been expressly agreed;
5. If a defect falls under warranty, MOTION DYNAMICS shall at its own discretion:
 - (a) repair the **Product**;
 - (b) het **Product** vervangen; or
 - (c) credit the purchase price (or a proportional part thereof);
6. **Cost allocation warranty handling.** The direct costs of repair or replacement shall be borne by MOTION DYNAMICS. All other costs, including but not limited to transport, assembly, disassembly and call-out charges, shall be borne by the **Client**, unless expressly agreed otherwise in the **Agreement** or an applicable **SLA**;
7. De **Klant** is verplicht gebrekkige **Producten** in geschikte verpakking aan MOTION DYNAMICS te retourneren. Gelet op het gewicht van de **Producten** dient de **Klant** gebruik te maken van een vervoerder met adequate laad-/hefcapaciteit (laadklep) om de **Producten** bij MOTION DYNAMICS af te leveren. Transport geschiedt steeds voor risico van de **Klant**;
8. If a complaint proves to be unfounded, the costs incurred by MOTION DYNAMICS as a result, including investigation costs, shall be entirely borne by the **Klant**;
9. If repair work and/or replaced parts are carried out under warranty in accordance with this article, a warranty equal to the remaining duration of the regular warranty period at that time shall apply to such work/parts. If the initial warranty period has already expired, a warranty period of maximum six (6) months shall apply, provided that such warranty shall only relate to hardware;
10. After expiry of the warranty period, all costs for repair or replacement, including administration, transport and call-out charges, shall be charged to the **Client**;
11. The warranty shall not affect claims based on statutory conformity and/or product liability, insofar as these are mandatorily applicable;

12. **Limitation of warranty to Producten en Diensten.** The warranty and claims under these General Terms and Conditions shall relate exclusively to the **Producten, Software en Diensten** delivered by MOTION DYNAMICS themselves, and not to end products that the **Client** manufactures, processes or trades with the aid thereof. MOTION DYNAMICS gives no warranty with respect to the suitability, functionality, safety or regulatory conformity of such end products, nor with respect to the suitability of the **Producten** for specific end applications of the **Client**, unless this has been expressly agreed in writing as a result obligation;

13 FORCE MAJEURE

1. The Parties are not obliged to fulfill any obligation if and insofar as they are prevented from doing so by **overmacht** within the meaning of Article 6:75 of the Dutch Civil Code;
2. **Force majeure** shall also include: war, threat of war, civil war, riot, molestation, fire, water damage, flooding, strikes, occupation of premises, lockouts, import and export restrictions, government measures (including pandemics and lockdowns), defects in goods, equipment, software or materials of third parties the use of which is prescribed or recommended by the **Klant**, power failures, disruptions in internet, data network or telecommunication facilities, as well as non-attributable shortcomings of suppliers or subcontractors of MOTION DYNAMICS;
3. The Party invoking **overmacht** shall notify the other Party in writing as soon as possible, with an indication of the expected duration and consequences;
4. During **overmacht** the obligations of the affected Party shall be suspended and any deadlines (including delivery times) shall be extended by the duration of the **overmacht**;
5. If **force majeure** continues for more than **ninety (90) days**, each Party shall be entitled to **Overeenkomst** dissolve the **Agreement** in writing (partially) without compensation, with restitution of amounts already paid for undelivered performances;
6. Insofar as MOTION DYNAMICS ten tijde van het intreden van **overmacht** haar verplichtingen uit de **Agreement** inmiddels gedeeltelijk has already partially fulfilled or will be able to fulfill, and the fulfilled or to-be-fulfilled part has independent value, MOTION DYNAMICS shall be entitled to invoice the already fulfilled or to-be-fulfilled part separately. The **Client** is obliged to pay such invoice as if it were a separate **Agreement**;

14 TERM AND TERMINATION

1. **Agreementen** for a definite period shall terminate by operation of law on the agreed end date, unless the **Agreement** provides that it shall be tacitly renewed;
2. **Agreementen** for an indefinite period may be terminated by either Party with a notice period of **three (3) months**, unless the **Agreement** provides for a different notice period.
3. **Termination indefinite period: Agreementen** for an indefinite period may be terminated by either Party with a notice period of three (3) months, unless (i) the **Agreementen** provides for a different notice period and/or (ii) the Parties have agreed on a cooperation agreement and/or **SLA** which expressly provides for a different notice period for that legal relationship; in that case, the notice period contained therein shall apply as *lex specialis*;
4. Termination must be effected in writing;
5. Each Party is entitled to **Agreement** with immediate effect extrajudicially (partially) dissolve the **Agreement** if:

- (a) the other Party culpably fails to fulfill essential obligations under the **Agreement** and such failure has not been remedied within a reasonable cure period (minimum fourteen (14) days) after written notice of default;
 - (b) the other Party is declared bankrupt, applies for or obtains a moratorium, or otherwise ceases to exist;
 - (c) the other Party is placed under guardianship or administration;
 - (d) an attachment is levied on a substantial part of the assets of the other Party and this attachment is not lifted within three (3) months;
6. Upon termination:
- (a) , all openstaande vorderingen van MOTION DYNAMICS onmiddellijk opeisbaar;
 - (b) ongoing work shall be ceased, unless the Parties agree otherwise;
 - (c) MOTION DYNAMICS is entitled to invoice its work pro rata of the performances rendered;
 - (d) the right of use of the **Client** to **Software** and intellectual property of MOTION DYNAMICS shall lapse, unless this right of use has been expressly granted permanently;
 - (e) the **Client** must immediately return all materials, prototypes and documentation made available to it to MOTION DYNAMICS;
7. If the **Client** cancels an order placed by it in whole or in part, the **Producten**, ordered or prepared for that order, plus any additional delivery costs thereof and the labor time reserved for the performance of the **Agreement** shall be charged in full to the **Client**;
8. If the dissolution is attributable to the **Client**, MOTION DYNAMICS shall be entitled to compensation for direct and indirect damages, including costs;
9. Provisions of these General Terms and Conditions which by their nature are intended to survive termination (including confidentiality, intellectual property, liability and dispute resolution) shall remain in full force and effect;

15 SUSPENSION AND DISSOLUTION

1. MOTION DYNAMICS is authorized to suspend the fulfillment of its obligations or to dissolve the **Overeen-komst** , if:
 - (a) de **Klant** the obligations under the **Agreement** does not or does not fully fulfill;
 - (b) after entering into the **Agreement** MOTION DYNAMICS circumstances have come to the attention of MOTION DYNAMICS that give good reason to fear that the **Klant** will not fulfill its obligations;
 - (c) at the time of entering into the **Agreement** the **Client** was requested to provide security for the fulfillment of its obligations under the **Agreement** and such security is not forthcoming or is insufficient;
 - (d) due to the delay on the part of the **Client**, MOTION DYNAMICS can no longer be expected to perform the **Agreement** under the originally agreed conditions;
2. MOTION DYNAMICS is furthermore authorized to dissolve the **Agreement** if circumstances arise of such a nature that performance of the **Agreement** is impossible or can no longer be required by standards of reasonableness and fairness;
3. If the **Agreement** is dissolved, the claims of MOTION DYNAMICS against the **Client** shall become immediately due and payable. If MOTION DYNAMICS suspends the fulfillment of its obligations, it shall retain its claims under the law and **Agreement**;
4. MOTION DYNAMICS shall always retain the right to claim damages;

16 AMENDMENT OF GENERAL TERMS AND CONDITIONS

1. MOTION DYNAMICS reserves the right to amend these General Terms and Conditions;
2. Amendments shall take effect thirty (30) days after written notification to the **Client** (by e-mail or post);
3. If the **Client** does not agree with an amendment that is far-reaching and materially worsens its position, the **Client** shall have the right to terminate the **Agreement** as of the date on which the amendment takes effect, provided that the **Client** notifies MOTION DYNAMICS thereof in writing within fourteen (14) days after notification;
4. For already existing **Agreementen** the General Terms and Conditions applicable at the time of entering into the **Agreement** shall remain applicable, unless the Parties agree otherwise in writing;

17 APPLICABLE LAW AND COMPETENT COURT

1. All legal relationships between MOTION DYNAMICS and the **Client** shall be governed exclusively by **Dutch law**;
2. The applicability of the Vienna Sales Convention (CISG) is expressly excluded;
3. **Forum selection (contract priority):** If the Parties in the **Agreementen** of in een individueel door Partijen ondertekend contractdocument (including a cooperation agreement, delivery conditions and/or **SLA**) have agreed on a forum selection, that forum selection shall apply and shall prevail over these General Terms and Conditions;
4. **Forum selection (GTC fallback):** In the absence of such an agreed forum selection, all disputes arising from or related to the **Agreementen** or these General Terms and Conditions shall be submitted to the competent court of the Central Netherlands District Court, Utrecht location, unless MOTION DYNAMICS chooses to submit the dispute to the court competent by law;
5. The Parties shall endeavor to resolve disputes first through amicable consultation before initiating legal proceedings;

18 FINAL PROVISIONS

1. These General Terms and Conditions have been filed with the Chamber of Commerce and can be consulted at '<https://motiondynamics.nl/algemene-voorwaarden>;
2. If any provision of these General Terms and Conditions proves to be void or voidable, this shall not affect the validity of the remaining provisions. In that case, the Parties shall consult to agree on a replacement provision that approximates the intention of the void/voidable provision as closely as possible;
3. The **Agreement** and these General Terms and Conditions shall be governed by the most recent version published by MOTION DYNAMICS, or the version that applied at the time the **Agreement**;
4. For the application of these General Terms and Conditions, 'written' shall also include communication by e-mail and other forms of electronic communication, provided that the identity of the sender and the integrity of the content are sufficiently established;
5. These General Terms and Conditions have been drawn up in Dutch. If these General Terms and Conditions are translated into another language, the Dutch text shall prevail in the event of any discrepancy;
6. Unless the context indicates otherwise, words in the singular shall also be deemed to include the plural and vice versa, and references to "he" shall also be deemed to include "she" and "it";