

# **GENERAL CONDITIONS**

## **VWE AUTOMOTIVE SOLUTIONS**

Version 2016

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## 1. GENERAL

### 1.1 Applicability

1.1.1 These conditions are applicable to all proposals and/or deliveries made by VWE and agreements and/or other legal relationships between VWE and Customer, the resulting provisions and related activities regardless of whether or not they are based on a verbal, written, and/or electronic agreement, unless otherwise agreed upon in writing.

1.1.2 **Purchase conditions or any other conditions used by Customer will not be applicable.** The applicability of purchase conditions or any other conditions from Customer or from third parties on behalf of Customer is therefore expressly rejected by VWE, unless explicitly accepted in writing by VWE.

1.1.3 VWE reserves the right to make alterations in and/or additions to the General Conditions VWE Automotive Solutions. The modified General Conditions VWE Automotive Solutions will become applicable, unless objections against modifications are made in writing within 30 (thirty) days of the notification date of the change.

1.1.4 Changes in and additions to the General Conditions VWE Automotive Solutions and/or agreements made between VWE and Customer are only valid when agreed to by VWE in writing.

1.1.5 If Customer consists of more than one legal entity or organization, each will be responsible for the entire fulfillment of the obligations that may flow forth from the agreement with VWE.

1.1.6 The headings above the clauses of these conditions are only intended to increase the readability of this document. The content and meaning of a clause placed under a particular heading is, therefore, not limited to the meaning and content of the heading.

### 1.2 Definitions

1.2.1 In the General Conditions VWE Automotive Solutions the following words and expressions are capitalized. Any of the following words and expressions shown in the singular shall have the same meaning when used in the plural and vice-versa

1.2.2 Administrative service(s):

As further described in clause 5.

1.2.3 Advance:

As further described in clause 8.6.

1.2.4 ASP-service:

ASP (Application Service Provider)-service constitutes the provision of VIS via a browser.

1.2.5 Authorization Procedure:

Procedure whereby VWE is entitled to verify if Customer possesses a certain required status and if Customer has received the necessary rights from the rightful party of Data (files) in order to obtain access to certain Data and/or has received the right to add, mutate, and/or change Data.

1.2.6 Automotive Industry:

All companies in the automotive industry. The definition, including the type of companies, was published by the Minister of Transport, Public Works, and Water Management (Minister van Verkeer en Waterstaat) in the Staatscourant dated December, 10, 2001, nr. 239 p.9.

1.2.7 Back-up:

Spare copies of digital Data and/or information.

1.2.8 Basic Registration:

A compilation of data, which is determined by law to contain authentic data (the unique source).

1.2.9 Business Days:

Normal Dutch working hours (9.00-17.00) and days (Monday through Friday) with the exception of public holidays.

1.2.10 Customer:

Anyone who requests and orders the delivery of Products.

1.2.11 Data Center:

A data center is a facility where servers can be connected to networks; especially the internet. A part of the Infrastructure is in the Data Centers of VWE.

1.2.12 Data (files):

Data files, including the data extracted from these data files, which are categorized in one or more tables. This data is ordered in records. These records consist of several fields. By using the ASP-service and/or VWE Application this Data can be viewed, consulted, selections can be made, sorted, adjusted or mutated, added or removed.

1.2.13 Decision:

A written legal decision of a minister under public law that provides VWE the right (Third Party General Conditions) to provide Sensitive Data.

1.2.14 (authorized) End-user:

Every person or legal entity that makes use of the Products with the permission of the rightful party and/or VWE.

1.2.15 Fair Use:

The reasonable use by Customer of the Products.

1.2.16 Fixed Price:

As further described in clause 8.4.

1.2.17 Error:

As further described in clause 7.6.

1.2.18 Identification Codes:

Usernames, passwords, address codes, and/or other codes.

1.2.19 Infrastructure:

The systems, hardware, software, network components and connections that are used for the Products. This collection of facilities is used for storing and transporting data [Messages and Data (files)] amongst other things.

1.2.20 Maintenance:

Maintenance is understood as keeping the VWE Products up to date, accurate, operational, and accessible. This includes the repair of Errors in the VWE Products.

1.2.21 Marketing Service:

A VWE Product on the basis of which VWE can market the products and/or services of Customer or promote the products and services of Customer through its own customer base, products, and/or services.

1.2.22 Messages:

Certain data/fields selected after consultation by one or more Data files and communicated to the requestor/End-user. This also includes the statistical information and off-line data products delivered by VWE.

1.2.23 NAR-decision:

The decision taken by the Dutch government whereby information providers, such as VWE, are no longer authorized to provide third parties with NAR-data (Name-

Address-Residence) which is received by the RDW after the effective date of this decision. The commencement of the NAR-decision was published in the Staatscourant dated February 26, 2007, nr 40/ pag.50.

- 1.2.24** Non-sensitive Data:  
Data received by an administrative body, such as RDW, after the effective date of The New Supply Policy, which VWE may exploit.
- 1.2.25** Object Code:  
The computer programming code substantially in binary form. It is directly executable by a computer after processing, but without reverse engineering, compilation or assembly.
- 1.2.26** Participant Data:  
Data entered and/or mutated by, via, or on behalf of Customer through the ASP-service and/or VWE Applications, which includes, amongst others, the kilometer status of cars.
- 1.2.27** Positioning Service:  
A VWE Product that consists of placing/including a Customer's product and/or service on the VWE website or in a Product delivered by VWE, whereby these products and/or services are made available to clients or End-users.
- 1.2.28** Process-data:  
Data with regard to the use of VIS by Customer. This includes amongst others the data requested/received by Customer and/or third parties, the Participant Data as well as the corresponding identification data from the sender/recipient and the times within which this data has been sent/received.
- 1.2.29** Products:  
All VWE Products and/or Third Party Products provided by VWE, the resulting provisions and related activities.
- 1.2.30** RDW:  
The RDW (Government Road Transport Agency) is an independent administrative body of the Dutch government. The primary task of the RDW is the maintenance of the service life of Dutch motor vehicles and the related documents, such as the Vehicle Registrations. This happens in the so-called Vehicle Registration Register.
- 1.2.31** Sensitive Data:  
Data received from an administrative authority, such as the RDW, after the entry into force of the New Supply Policy which VWE may only use within the boundaries of a relevant Decision.
- 1.2.32** Source code:  
The computer programming code that may be displayed in a form readable and understandable by a programmer of ordinary skill. It includes related Source Code level system documentation, comments and procedural code. Source Code does not include Object Code.
- 1.2.33** Support:  
As further described in clause 2.5.
- 1.2.34** Subscription:  
Agreement between VWE and Customer for a further fixed period for a periodic fee to be paid by Customer to VWE.
- 1.2.35** Subsequent Calculation:  
As further described in clause 8.5.
- 1.2.36** The New Supply Policy:  
The new governmental policy whereby the Road Traffic Act 1994 was amended in connection with the recognition of the license register as a Basic Registration as well as in connection with the renewal of the provision of data from the license registration and other changes (Staatsblad 2008, 99).
- 1.2.37** Third Party General Conditions:  
Third Party General Conditions are amongst others understood as the delivery conditions, license conditions, warranty conditions, or other conditions maintained by a third party.
- 1.2.38** Third Party:  
A party other than VWE, Customer, or client.
- 1.2.39** Third Party Infrastructure:  
That part of the Infrastructure that is managed and/or delivered by a third party or Customer and over which VWE in principle has no control.
- 1.2.40** Third Party Products:  
All Data (files), Messages, products or services provided by VWE, the resulting provisions and related activities, which originate from third parties and whose intellectual property rights, industrial property rights and other rights are not held by VWE such as, but not limited to products and services of the RDW.
- 1.2.41** Vehicle Registration:  
A vehicle registration is a means of identification for motor vehicles; which is made up of a license plate attached to the vehicle with a letter and number combination and a corresponding proof of license (paper).
- 1.2.42** Vehicle Registration Register (BKR):  
The license plate registration from the RDW as a Basic Registration.
- 1.2.43** VIS:  
Vehicle information system of VWE whereby Data files can be opened up and/or Messages can be sent by VWE to Customer. Customer can access VIS, which stands on the VWE Infrastructure, via the ASP-service or the VWE Applications.
- 1.2.44** VWE:  
VWE-Bureau for Voertuigdocumentatie en -Informatie B.V. and its rightful successors or affiliated organizations and partners that will enter into an agreement with Customer and has declared the General Conditions VWE Automotive Solutions applicable.
- 1.2.45** VWE Applications:  
(Web) applications or (XML) interfaces, with which VWE makes VIS available. VWE may make use of software Products herein. VWE Applications includes the applications which VWE licenses under its own name and the so-called "white label" applications that can be incorporated/framed by third parties in their applications
- 1.2.46** VWE Infrastructure:  
That part of the Infrastructure that is managed and/or delivered by VWE and which is under the control of VWE. The VWE Infrastructure is located in VWE's Data Center.
- 1.2.47** VWE Products:  
All products and services provided by VWE and the resulting provisions and related activities, which do not originate from third parties and whose intellectual property rights, industrial property rights and other rights are held by VWE. The ASP-service, the making available of the VIS via the VWE Applications as well as the Marketing Service and Positioning Service are VWE Products.
- 1.2.48** Warranty:

- As further described in clause 7.8.
- 1.2.49** (XML) interface:  
An intermediary with which a computer program can communicate with another program or part (usually in the form of a library).
- 1.3 Confirmation**
- 1.3.1** Verbal agreements, assignments, or other expressions of whatever nature by employees of VWE are only valid and binding when they have been confirmed in writing by authorized representatives of VWE.
- 1.4 Offers**
- 1.4.1** All offers made are without engagement, unless the offer explicitly indicates otherwise in writing.
- 1.4.2** Offers are based on the data, information, or requirements made known by Customer as set out in clause 1.6.
- 1.4.3** All offers regarding Third Party Products, such as but not limited to Messages and/or Data (files) from the RDW, take place under the condition that VWE receives the rights in these Third Party Products from the supplier and doesn't lose these rights, such as but not limited to, the loss of the right to exploit Messages and/or Data (files) from the RDW as a result of the director of the RDW successfully protesting against the use and/or delivery of the RDW Messages and/ or Data (files), whether or not on behalf of Customer.
- 1.5 Agreements**
- 1.5.1** VWE is entitled to immediately terminate the agreement wholly or partially, without being obligated to pay any form of (damage) compensation to Customer, at the moment that:
- VWE dissolves the agreement within 2 Business Days;
  - VWE loses the right to deliver the Third Party Product for whatever reason such as indicated in clause 1.4.3.
- 1.5.2** VWE is entitled, when entering into an agreement with Customer, to maintain an Authorization Procedure for certain Products, for which additional conditions may be applicable
- 1.5.3** If requested Customer is obligated to submit, as soon as possible, a statement to VWE regarding the purpose of use of the Product that Customer obtains or wishes to obtain.
- 1.5.4** An agreement between VWE and Customer commences at the moment that an order or assignment (resulting from an offer) is accepted by VWE in writing.
- 1.5.5** An agreement between VWE and Customer, for which no further contract and/or term has been agreed, has a term of 1 (one) year if the delivery concerns a Product for which a periodic fee is charged such as, but not limited to, a Subscription, Administrative services, Maintenance, and Support. If this agreement is not terminated or not terminated in time, it shall be extended repeatedly in increments of 1 (one) year.
- 1.5.6** Parties are entitled to terminate the agreement as described in clause 1.5.5 through means of a registered letter and taking into account a notice period of 3 calendar months.
- 1.5.7** Each party has the right to terminate the agreement wholly or partially without judicial intervention by means of a signed registered letter. This can be done if, after notifying the breaching party in writing of a failure to fulfill its obligations, the breaching party then fails to meet the aforesaid obligations within a reasonable period of time.
- 1.5.8** VWE has the right to immediately terminate the agreement, wholly or partially, without judicial intervention, through means of a non-judicial declaration and/or withdraw and/or annul an offer: if Customer is a person and becomes deceased, if Customer submits a legal request for debt restructuring, if bankruptcy or suspension of payment has been filed for Customer, if Customer is in a state of bankruptcy or suspension of payment has been granted, or if Customer's company is liquidated or ended for any reason other than reconstruction or company merger. In these cases, any claim by VWE will be immediately due.
- 1.5.9** After the agreement has been ended, for any reason, Customer can no longer obtain any of the rights provided by the agreement, leaving unhindered the existence of the obligations of both parties which by their nature continue automatically after the conclusion of their agreement, such as but not limited to, obligations concerning property rights, confidentiality and non-competition.
- 1.5.10** After the agreement has ended, for any reason, Customer must:
- remove the Products from the systems on which they have been installed;
  - remove/destroy Back-ups and/or other possible copies of the Products;
  - ensure that the delivered physical Products are in the possession of VWE within 5 Business Days. Customer bears the costs and the risk for the timely return of the Products to VWE.
- 1.6 Co-operation/Information Requirements for Customer**
- 1.6.1** All assignments are carried out by VWE on the basis of data, information, wishes, and/or requirements made known to VWE by Customer.
- 1.6.2** Customer shall provide all necessary cooperation to VWE and shall make timely known all useful and necessary data and/or other information required for an adequate execution of the agreement. Customer shall ensure the accuracy of this data and/or other information.
- 1.6.3** If data, information, wishes, and/or requirements necessary for execution of the agreement are not provided, not timely provided, and/or not provided in accordance with the agreement, or if Customer fails to meet its obligations in any other way; then VWE has in any case the right to terminate or dissolve the agreement or to suspend execution of the agreement and VWE has the right to charge the costs incurred at its usual rates
- 1.6.4** If changes and/or new facts arise in regard to data, information, wishes, and/or requirements provided earlier, VWE will always be fully justified in consultation with Customer to adjust the agreement to these new circumstances or to dissolve or terminate the agreement.
- 1.6.5** In the event VWE performs activities on a location other than its own, Customer will be responsible for providing free of charge reasonable requested facilities, such as office space and telecommunication facilities.
- 1.7 Activities and Third Party Products**
- 1.7.1** All activities will take place on Business Days and under

normal working conditions. The Vehicle Registration Register from the RDW is accessible to VWE outside of working hours and on Saturdays, but the RDW is closed outside of working hours and on Saturdays and cannot therefore provide any support. Customer is aware that this can influence the Products delivered by VWE outside RDW's work days and working hours.

- 1.7.2** VWE is entitled, without the explicit consent of Customer, to make use of third parties when performing activities. VWE therefore has the right to delivery Third Party Products or make use of Third Party Products in fulfilling its obligations flowing forth from the agreement. VWE is not responsible for Third Party Products, unless agreed upon otherwise in writing.
- 1.7.3** If VWE delivers Third Party Products to Customer, the Third Party General Conditions will be applicable to the agreement in addition to these General Conditions VWE Automotive Solutions.
- 1.7.4** VWE will deliver rights regarding Third Party Products under the same conditions as given in the Third Party General Conditions.
- 1.7.5** Third Party General Conditions that are declared applicable in these General Conditions VWE Automotive Solutions shall, when available to VWE, be immediately provided upon request. Third Party General Conditions will be delivered in the same format and language as received by VWE.
- 1.7.6** The General Conditions VWE Automotive Solutions have priority over Third Party General Conditions unless indicated otherwise. When there is conflict between the General Conditions VWE Automotive Solutions and Third Party General Conditions, VWE has the right to declare the conflicting terms of the Third Party General Conditions applicable or inapplicable.
- 1.8 Confidentiality/Non-competition**
- 1.8.1** VWE and Customer mutually commit themselves to the confidentiality of all data and information concerning each other's organization, clients, files, and Products, of which they become aware while working for each other or for Customer's clients. Data and information may only be used in order to carry out the agreement between parties.
- 1.8.2** VWE is authorized to place the name and logo of Customer or Customer's clients who are given rights to the Products on the VWE website and/or reference list and to make them available to third parties for information.
- 1.8.3** Customer and its clients will not enter into any direct or indirect commercial, employment, or other such relations with employees from VWE during the agreement and for a period of 12 (twelve) months after termination or dissolution of the agreement, without the written consent of VWE. Customer will ensure that its clients comply with the foregoing obligation.
- 1.8.4** In the event that Customer breaches clause 1.8.3, Customer will be charged, without further notification required, a fine of € 50,000 (fifty thousand Euros) for each breach, increased with € 1,000 (one thousand Euros) per each day the breach continues, undiminished the right of VWE to claim full compensation for damages incurred.
- 1.9 Liability**
- 1.9.1** VWE's total liability shall be limited, in accordance with clauses 1.9.2 and 1.9.3, to compensation for direct

damage and to a maximum of the amount of the price stipulated in the agreement (excluding VAT) to a maximum of € 50,000 (fifty thousand Euros), whereby a sequence of events is regarded as one event

- 1.9.2** If the agreement also includes an agreement over time with a term of more than 1 (one) year and VWE's liability flows forth from the agreement over time, the stipulated price will be calculated on the basis of the total amount (excluding VAT) as actually paid by Customer to VWE on the basis of the agreement over time for 1 (one) year (this being the year in which the damage occurred) to a maximum of € 100,000 (one hundred thousand Euros).
- 1.9.3** VWE has insured itself against damage. VWE is in any case not liable for further damage and will not compensate for any further damage which Customer may suffer on the basis of the agreement entered into with VWE, however caused, including possible claims of liability against Customer by third parties, than is covered and actually compensated for by the insurance increased with VWE's deductible (own risk), except in case of malicious intent (opzet) or reckless disregard (bewuste roekeloosheid).
- 1.9.4** VWE's total liability for damage resulting from death or physical injury will in no event amount to more than € 1.000.000,- (one million Euros), whereby a sequence of events is regarded as one event.
- 1.9.5** Direct damage is exclusively understood as:
- the reasonable and similar expenses which the Customer would have to incur to make the VWE's 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 Customer or when clause 1.5.1 is applicable;
  - the reasonable costs made in determining the cause and extent of the damage;
  - the reasonable costs incurred in prevention or limitation of the damage, to the degree that Customer can demonstrate that these costs have led to the limitation of the damage.
- 1.9.6** VWE's liability for indirect damage, including consequential damage, loss of profit, loss of savings, deterioration of good will, destruction or loss of data, information, Data (files), and/or messages, delays, losses, damage as a result of a failure of Customer to provide the required information or assistance, damage through corporate inactivity, is expressly rejected.
- 1.9.7** With the exception of the cases named in clauses 1.9.1 and 1.9.4, VWE has no liability for damage compensation regardless of what an action towards compensation could be based upon
- 1.9.8** VWE's liability exists solely when Customer immediately and appropriately notifies VWE of the deficiency in writing, proposing therein a reasonable time period for correction of the deficiency and VWE then culpably fails to meet the aforesaid obligations. The notification of deficiency ought to be as detailed a description of the deficiency as possible so that VWE is able to react adequately.
- 1.9.9** The condition for the existence of any right to compensation is always that Customer notifies VWE in writing by registered mail within 60 (sixty) days after the damage came into existence and takes the necessary measures to limit the damage as much as

- possible.
- 1.9.10** Customer indemnifies VWE from all liability regarding third parties due to allegations as a consequence of deficiency in a product or service provided by Customer to third parties that consisted of a delivery made by VWE.
- 1.9.11** VWE does not accept any liability for damage regardless of its nature caused by Third Party Products which VWE has delivered to Customer. If possible VWE will transfer its rights for damage compensation from the supplier of the Third Party Product in question to Customer.
- 1.9.12** VWE is not liable for any damage regardless of its nature, which is a result of a failure to provide Products on time and damage as a result of the fact that VWE is required to meet certain, altered, and new laws and other regulations.
- 1.10 Transfer**
- 1.10.1** The agreement between VWE and Customer and the rights and obligations, which flow forth from this agreement, cannot be transferred to a third party by Customer without the prior written consent from VWE. VWE is permitted without needing the explicit prior approval of Customer, to transfer the agreement and the rights and obligations flowing forth from such agreement to affiliated holding and/or daughter companies.
- 1.11 Force Majeure**
- 1.11.1** Neither party is obligated to fulfill any obligation if they are prevented from doing so as a result of circumstances, which can be considered beyond their fault, and by law, legal act, or generally accepted practices cannot be held accountable for. The aforementioned circumstances include circumstances that are beyond VWE's power as well as business risks of VWE, these include but are not limited to failure to perform by a supplier of VWE, such as but not limited to the RDW, the late supply of required information, Data (files), Messages, information, and/or specifications, changes in such information, incorrect functional descriptions and/or specifications of Third Party Products and/or products delivered by a third party, bad weather conditions, fire, explosions, electricity failures, network failures, floods, illness, lack of staff, strike or other employment conflicts, accidents, actions by the government, not being able to obtain required licenses and/or permits, lack of materials, theft, traffic disruptions, and/or transportation problems.
- 1.11.2** When force majeure is of a temporary nature, VWE has the right to suspend its commitments until force majeure has ceased to exist without being obliged to any form of damage compensation.
- 1.11.3** VWE reserves the right, in the case of force majeure, to collect payment for obligations already fulfilled before force majeure was known.
- 1.11.4** In the event that force majeure of either party surpasses a three month period, either party has the right to terminate the agreement without being obliged to any form of damage compensation regarding such termination.
- 1.12 Nullity**
- 1.12.1** If one or more terms (or part of a term) of the agreement is nullified, declared to be nullified, annihilable, or has lost its validity in another way, the other terms (or part of the term in question) of this agreement will remain in force undiminished.
- 1.12.2** In regard to terms (or a part of the term) that are nullified, declared to be nullified, annihilable, or lose their validity in another way, parties shall consult with each other to try to reach a substitute arrangement within which the parties shall strive for the maintenance of this agreement (or the remainder of the term in question) in its totality.
- 1.13 Applicable Law and Dispute Mechanism**
- 1.13.1** All agreements made between VWE and Customer are governed by the laws of The Netherlands, unless otherwise agreed upon in writing.
- 1.13.2** Any dispute between parties arising under any agreement will be solved through arbitration of the Stichting Geschillenoplossing Organisatie en Automatisering (SGOA) [The Dutch arbitration court (foundation) for ICT related matters], in accordance with the SGOA's regulations for arbitration. With the mutual agreement of both parties, parties may try to solve their disagreement through other provisions offered by the SGOA for the settlement of disputes prior to arbitration.
- 1.13.3** If the SGOA declares itself unauthorized or if parties mutually agree to such, disputes will be placed before a qualified court in Alkmaar, the Netherlands
- 1.13.4** Either party also may, without waiving any remedy under the agreement, seek from the qualified court in Alkmaar any interim or provisional relief that is necessary to protect the rights or property of that party, pending the establishment of the SGOA arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the controversy).
- 1.13.5** The General Conditions VWE Automotive Solutions are translated from the original Dutch version and the intention thereof is valid in any disagreement.
- 2. VWE PRODUCTS**
- 2.1 User Rights Products**
- 2.1.1** Customer is granted the non-exclusive right to use the Products and corresponding documentation.
- 2.1.2** User rights are limited exclusively to own use of the Products for the agreed upon CPU (Central Processing Unit), number of users, servers, and/or workstations. If nothing is agreed upon, user rights will be limited to the CPU on which the Products were first installed and the number of users, servers, and/or workstations will be limited to 1 (one).
- 2.1.3** User rights for software Products or VWE Applications are limited to the Object Code. Rights to the Source Code are not provided, unless explicitly agreed upon otherwise in writing. VWE is only required to keep Source Codes for software Products for a period of 3 years after delivery of the VWE Product to which the Source Code applies.
- 2.1.4** The user rights with regard to the Products are limited to:
- having the availability/access to specific data/fields from Data (files) agreed upon in writing or the receipt of Messages as further specified in writing directed at and/or requested by Customer;
  - the purpose agreed upon in writing for which the Data (files) may be used, revised, mutated, and/or processed by Customer;



- c) the use within the own organization of Customer;
  - d) use within the boundaries of the relevant Decision, if and for so far as a Product consists of Sensitive Data from a Data file from the RDW; it is therefore explicitly forbidden to use and/or make Data (files) or Messages that contain Sensitive Data available outside the boundaries of the relevant Decision;
  - e) use within the Automotive Industry, if and for so far as a Product also contains data (Messages) from the Data files from the RDW and the Data file contains fields (especially NAR) that VWE as of March 1, 2007 no longer receives from the RDW conform the NAR-decision. In light of this it is explicitly prohibited to use and/or make the Data (files) or Messages that contain this sort of information from the RDW available outside of the Automotive Industry.
- 2.1.5** Customer is obligated to destroy Data (files) and/or Messages after use for the purpose for which they have been provided. It is explicitly prohibited to use the data received for the creation of (one's own) data files.
- 2.1.6** Customer is prohibited from, directly or indirectly (through a third party) copying, duplicating, or altering the Products in any way, without the prior written approval from VWE.
- 2.1.7** Customer is allowed to make one Back-up copy of the VWE Application (software Product), physically made available, for safety purposes only, if a Back-up is not provided by VWE.
- 2.1.8** User rights on the Products cannot be transferred to any third party (third parties also include holding and/or subsidiary companies), unless agreed upon otherwise, while observing clause 2.11.
- 2.1.9** Customer does not have the right to make the Products available, under any title or in any way whatsoever, to any third party (third parties also include holding and/or subsidiary companies), unless agreed upon otherwise, while observing clause 2.11.
- 2.1.10** Reverse engineering or decompilation of the Products is not permitted by Customer, unless such is explicitly permitted by law.
- 2.1.11** The user rights shall go into effect after Customer has made the required payments and fulfilled its other obligations.
- 2.1.12** The extent of the user rights on Third Party Products is determined by the Third Party General Conditions as described in clause 5.2.3. Where the foregoing does not deviate from the Third Party General Conditions, the foregoing will also be applicable.
- 2.2 Verification**
- 2.2.1** VWE is entitled to incorporate technical limitations and control mechanisms in the Products in order to prevent and/or verify that the actual number of users, servers, and/or workstations does not surpass the agreed upon number and to verify that the Products are used in accordance with the agreed upon purpose and/or applicable conditions.
- 2.2.2** VWE is entitled itself or through the use of a third party, as long as Customer makes use of the Products, to make unannounced verification visits to the locations where the Products are used. Customer shall provide all necessary cooperation and access. In the event Customer refuses cooperation and/or access and/or Customer does no

longer meet its commitments in whole or partially under the agreement, VWE will be entitled to terminate the agreement without any obligation for damage compensation towards Customer.

**2.3 Maintenance**

**2.3.1** Delivery of the Products shall never constitute the automatic delivery of Maintenance thereon by VWE.

**2.3.2** VWE strives to provide Maintenance to the best of its abilities. Where the further to be specified terms and conditions do not deviate therefrom, this clause 2.3 will be applicable to Maintenance.

**2.3.3** VWE is entitled to refuse the provision of Maintenance if the Products, or the environment in which the Products operate, have been changed in any way or form by Customer.

**2.3.4** If Customer refuses to install new updates/releases/versions of software Products that are offered to Customer by VWE then VWE reserves the right to terminate the agreement or to adjust the agreement in accordance with this refusal.

**2.4 Advice**

**2.4.1** All Products that can be considered advice or which can be described as advice, such as but not limited to Support (clause 2.5), will only be given to the best of VWE's knowledge and capability.

**2.4.2** VWE is not responsible and/or liable if the activities that follow forth from advice result in a failure to carry out a project of Customer within allocated budgets, time schedules, and other possibly agreed upon conditions.

**2.4.3** VWE will provide advice on the basis of the conditions required by VWE and information received from Customer as mentioned in clause 1.6. If it appears that not all relevant information has been received and/or other problems and/or insights may arise, such as but not limited to incompatibility problems (products are unable to interoperate with each other), the given advice may be adjusted to the new circumstances.

**2.5 Support**

**2.5.1** Support consists of providing verbal (telephonic) and written (e-mail) advice through the VWE helpdesk concerning the use and operation of Products. Customer is entitled to make use of this helpdesk on Business Days in the event Customer acquires Products directly from VWE.

**2.5.2** VWE is entitled, in its sole discretion, but while specifying the reasons, to refuse the provision of Support to Customer or after giving prior notice to Customer, to charge fees/costs for the provision of Support

**2.5.3** VWE will only provide Support on the most current versions/releases/updates of the Products. VWE is entitled in its sole discretion to provide Support on older versions, releases, etc. of the Products.

**2.6 Additional Work**

**2.6.1** If in the opinion of VWE, a change request by Customer is in fact a request for additional work, VWE will notify Customer thereof prior to performing additional work. Upon request by Customer, the notification will be followed by a specification of the price and additional conditions. Customer will decide as soon as possible whether to carry out the additional work.

- 2.6.2** It will be assumed that Customer has agreed to the performance of additional work and the costs connected therewith, if Customer has allowed additional work to take place without raising objections in writing prior to the commencement of additional work.
- 2.7 Installation and Implementation**
- 2.7.1** Only if agreed upon in writing will VWE install and/or implement the Products or have them installed and/or implemented.
- 2.7.2** Prior to installation and/or implementation Customer will see to it, at its own expense, that all conditions required by VWE have been met in order to ensure a successful installation and/or implementation.
- 2.7.3** Customer will ensure and is entirely responsible for obtaining the necessary Third Party General Conditions in order to let the installation take place legally.
- 2.7.4** If, due to the Customer's fault, implementation and/or installation was not able to take place within the agreed upon time schedule, Customer will make payments as if implementation and/or installation had been performed, undiminished the obligations of VWE to proceed with the installation and/or implementation at a later time period.
- 2.8 Back-ups**
- 2.8.1** If possible and explicitly permitted by VWE, Customer will be responsible for making the required Back-ups in a timely manner. VWE will, upon request, inform Customer of the procedures necessary for the security of data and the realization of Back-ups.
- 2.8.2** If it is not possible for Customer to make Back-ups (and it is possible for VWE to make Back-ups) or if it is agreed upon that VWE will provide partially or entirely for the provision of Back-ups, VWE will make the Back-ups. VWE will in no event be liable for these Back-ups for so far as but not limited to the complete or partial loss of these Back-ups and/or errors in the Back-ups.
- 2.9 Activities**
- 2.9.1** All activities including Administrative services, Maintenance, Support, and other services will take place without interruption on Business Days and under normal working conditions.
- 2.9.2** Activities that are performed outside of Business Days are considered as overtime. The applicable rate will be increased with 50% for overtime after or before Business Days. The applicable rate will be increased with 100% for overtime on weekends and public holidays.
- 2.9.3** If it is agreed upon that activities will take place in phases, VWE will be entitled to postpone activities that belong to the next phase until Customer has accepted activities performed in the previous phase in writing.
- 2.9.4** VWE will only be obligated to follow timely and reasonable instructions given when performing activities if agreed upon explicitly in writing. VWE is not obligated to follow instructions that will alter the content or scope of the agreed upon activities. In the event such instructions are followed, the activities performed will be charged on the basis of Subsequent Calculation.
- 2.9.5** VWE is entitled, without the explicit consent of Customer, to make use of third parties when performing activities.
- 2.9.6** After Customer has notified VWE of a problem in writing, electronic format, or by telephone, VWE will take the necessary steps which will lead to or could lead to a solution.
- 2.10 Custom Work**
- 2.10.1** All assignments consisting wholly or partially of custom work are billed on the basis of Fixed Price or Subsequent Calculation.
- 2.10.2** Parties shall specify in writing the VWE Product to be developed and how this shall be done. VWE will carry out the VWE Product development activities with due care on the basis of information provided by Customer, for which information Customer ensures the accuracy, completeness, and consistency.
- 2.10.3** VWE is authorized, but not obligated, to investigate the correctness, completeness, and/or consistency of the data or specifications provided to VWE and, in case it is determined that there is an inaccuracy, incompleteness, or inconsistency, to suspend activities until such time as Customer has remedied the deficiencies.
- 2.10.4** The development of custom work takes place according to the following primary phases:
- Functional design phase;
  - Technical design phase;
  - Development of modules phase;
  - Test and acceptance phase in accordance with clause 7.4
- 2.10.5** If Customer does not wish to follow the foregoing phases, this will be at the risk (and expense) of Customer.
- 2.10.6** A deviation of 10% in the prices mentioned will be deemed to be accepted by Customer and will not require further notification to and/or approval by Customer.
- 2.10.7** Intellectual property rights, industrial property rights, and other rights to custom work remain at all times with VWE, as described in clause 9.1.
- 2.11 Perpetual clause with regard to Products**
- 2.11.1** Customer is obligated before making Data (files) or Messages available to or accessible for third parties or opening such on behalf of third parties to:
- prohibit the third party from using the Data (files) or Messages for any use other than the purpose for which they have been provided and in accordance with the applicable laws and regulations;
  - obligate the third party to destroy the Data (files) or Messages after use for the purpose for which the Data has been provided and prohibit the use of the data for the creation of (one's own) data files.
- 2.11.2** Customer is also obligated, in the event these Data (files) or Messages contain data from the RDW, to:
- only use the Data (files) and/or Messages within the boundaries of the relevant Decision, if and for so far as a Product is made up of Sensitive Data received from a Data file from the RDW; it is therefore explicitly forbidden to use and/or make the Data (files) and/or Message available outside of the boundaries of the relevant Decision;
  - only use the Data (files) and/or Messages within the Automotive Industry, if and for so far as a Product also contains data from the Data files from the RDW and the Data file contains fields (especially NAR) that VWE as of March 1, 2007 no longer receives from the RDW conform the NAR-decision. In light of this it is explicitly prohibited to use and/or make the

Data (files) or Messages that contain this sort of information from the RDW available outside of the Automotive Industry.

- 2.11.3** If the clients of Customer are resellers of these Data (files) or Messages, Customer will ensure that this article in the form of a perpetual clause will apply in the same way to Customer's clients, meaning that all Clients, End-users, and other recipients of the Data (files) or Messages will be subject to the prohibitions and obligations as set out in this clause.

### **3. VIS (VWE AUTOMOBILE INFORMATION SYSTEM)**

#### **3.1 VIS General**

- 3.1.1** VWE shall provide Customer with user instructions, necessary software, and Identification Code with regard to VIS upon commencement of the agreement.
- 3.1.2** The VIS will only be offered from a location approved by VWE (Data Center) and on the equipment approved by VWE (VWE Infrastructure).
- 3.1.3** If Customer is permitted to make changes and/or mutations in the Data (files) through VIS, Customer will be responsible and liable for all alterations, enhancements, and/or other changes made and the consequences thereof.
- 3.1.4** With regard to the access and use of VIS, Customer has equipment and software directly or indirectly available which complies with the standards and/or requirements set by VWE of which Customer has been notified directly or indirectly. Customer is required to maintain compliance with the conditions set out in this clause. If equipment and/or software do not comply with this clause, the obligations of VWE to provide access to VIS and the use of it may be suspended by VWE.
- 3.1.5** Customer will enable VWE to verify if the standards and/or requirements as set out in clause 3.1.4 are met.
- 3.1.6** If Customer, after the verification as set out in clause 3.1.5, still fails to meet the standards and/or requirements as set out in clause 3.1.4, VWE has the right to terminate or dissolve the agreement wholly or partially without prior notification and/or judicial intervention.
- 3.1.7** Customer is required to follow instructions given by VWE regarding VIS.
- 3.1.8** VWE is entitled to view log files and the like for purposes of analyzing the use of VIS. The results of such an analysis will not be made available to third parties (third parties do not include holding and/or subsidiary companies of VWE). This does not apply to figures and data with regard to the use of VIS, which are not directly traceable to the use by Customer.
- 3.1.9** In the event Customer signals a malfunction, this will immediately have to be reported to VWE. After Customer has notified VWE of the malfunction, VWE will take the necessary steps, which will lead or could lead to a solution.
- 3.1.10** The costs for resolving the malfunction are for the account of Customer if it appears that the malfunction is the result of Customer's act or failure to act in accordance with the agreement.
- 3.1.11** VWE will inform Customer prior to the commencement of intended Maintenance with regard to the VIS, if

Maintenance will lead to problems with regard to gaining access to VIS or the non-availability of VIS. In this case Maintenance will take place from 18.00 until 06.00 hours (CET). Other Maintenance will take place during Business Days; in any case VWE will not be liable for damage that is possibly caused by the unavailability of VIS.

#### **3.2 Responsibilities VWE**

- 3.2.1** VWE will take care of the provision of VIS. VWE will on a best effort basis and where influential by VWE strive for an availability of the VIS of:
- 98% from Monday through Friday during 6:00 a.m. and 6:00 p.m. (CET);
  - 70% from Monday through Friday during 6:00 p.m. and 6:00 a.m. (CET);
  - 70% on Saturday and Sundays.
- 3.2.2** The percentages mentioned in clause 3.2.1 are measured over a calendar year. The time for Maintenance is not included.
- 3.2.3** VWE does not guarantee, amongst others, that the telephone lines, the Internet, and/or other networks will offer optimal access in the event VWE depends on third party telecommunication providers for the use and/or provision of the connection.
- 3.2.4** VWE does not have any obligations with regard to availability, reliability, and/or other performance requirements with regard to the telephone lines, the Internet, and/or other networks and the resulting provisions.
- 3.2.5** VWE will strive to provide all useful and necessary measures to ensure adequate operability and continuity of VIS. VWE makes use of the most recent and most used virus protection programs in the market.
- #### **3.3 ASP-service**
- 3.3.1** The license of the ASP-service is provided by VWE in the form of a Subscription.
- 3.3.2** The ASP-service is accessible by Customer through a browser. The ASP-service has been optimized for the browsers as indicated by VWE. The browsers for which the ASP-service has been optimized at the moment of entering into the agreement will be made know by VWE.
- 3.3.3** VWE is not obligated to keep access to the ASP-service optimal through the browsers as mentioned in clause 3.3.2. VWE is entitled, without any form of (damage) compensation being required, to make changes in the ASP-service which may influence the browser used by Customer and/or advised by VWE.
- 3.3.4** In the event that the situation as described in clause 3.3.3 takes place, VWE will use all reasonable endeavors to enable Customer to make a transition to a different browser. The costs incurred by Customer in doing so are for the account of Customer
- #### **3.4 Use of Identification Codes**
- 3.4.1** VWE will make Identification Codes solely available to Customer for the use of Products. Customer will use these Identification Codes with care. Customer will notify VWE in the event of loss, theft, and/or any other form of unauthorized use, in order to enable parties to take the appropriate actions.
- 3.4.2** Customer bears all responsibility, liability, and costs related to the use of Identification Codes used and/or

- distributed by Customer. In no event will VWE be liable for the misuse and/or unauthorized use of Identification Codes.
- 3.4.3** If there is a reasonable suspicion of misuse or unauthorized use of Identification Codes, VWE can provide Customer with the instructions, which must be carried out.
- 3.4.4** If it is determined that misuse has been made of Identification Codes or if Customer ignores instructions given by VWE as set out in clause 3.4.3, Customer will be immediately in default.
- 3.5 Changes in VIS**
- 3.5.1** VWE is entitled, after notification while observing a reasonable notice period term and without any compensation to Customer, to make adjustments and/or changes in the VIS such as but not limited to:
- a) entrance procedures, such as:
    - procedures regarding operational rules;
    - security requirements.
  - b) changes in a supplier, location, hardware, software, and other facilities necessary for the provision of the VIS.
- 3.5.2** If the changes made have a demonstrable and significant negative impact on Customer's business and/or the functionality of the VIS, Customer may, after providing proof of the deterioration in writing, request VWE in writing to provide an alternative. If VWE then fails to provide an alternative, Customer has the right to terminate the use of the VIS, without any damage compensation required by VWE or restitution of monies paid.
- 3.6 Data Traffic From Customer**
- 3.6.1** With regard to data traffic from and/or to Customer VWE is merely a 'passive conduit'. VWE does not give any warranties with regard to content of data such as but not limited to its reliability or completeness.
- 3.6.2** Customer is responsible for the content of Participant Data and/or the data traffic originating from Customer. Where applicable the code of conduct as set out in clause 3.8.3 will apply to Customer and its users.
- 3.6.3** VWE is entitled to include Participant Data in a data file to be exploited by VWE as a result of which, amongst others, VWE is entitled to store Participant Data and/or to deliver Participant Data to third parties or make it available to third parties within the boundaries of the law.
- 3.6.4** Customer indemnifies and will keep VWE free from any damage compensation regarding any claim, accusation, or court procedure from a third party with regard to the (content of) the Participant Data and/or data traffic or other information originating from Customer.
- 3.6.5** VWE is entitled to store Process-data. Process-data will initially be retained for the duration of the agreement.
- 3.7 Requirements Customer VIS**
- 3.7.1** If, through use of VIS, privacy information and/or other information/data are transported or commercial activities and/or other activities are undertaken, Customer will indemnify VWE from all liability, costs, or damage as a result of claims from a third party in the event this privacy information and/or other information/data are transported or commercial activities and/or other activities are undertaken in violation of the relevant (privacy) laws and/or other applicable regulations.
- 3.7.2** Customer will immediately inform VWE in writing regarding changes that are relevant for the proper execution of the VIS.
- 3.7.3** Customer will follow the instructions given by VWE regarding Fair Use. If Customer fails to follow the instructions given by VWE, VWE will be entitled through technical means to reduce the overload or in the case of a continuous overload to stop the provision of the VIS to Customer. VWE will never be liable for damage of whatever nature that is incurred by Customer and/or third parties as a result of the measures undertaken by VWE.
- 3.8 Privacy Information**
- 3.8.1** Customer is responsible for protecting (privacy) information, which is sent and/or processed by the equipment and/or programs of VWE on behalf of Customer.
- 3.8.2** Customer will indemnify VWE against any allegation as a result of the violation of any person's privacy.
- 3.8.3** Where Customer is authorized, Customer explicitly agrees with the registration of (privacy) information of users in the privacy registration of VWE for administrative and management purposes. The privacy registration will contain, amongst others, Identification Codes and Process-data and will only be accessible for VWE. This information will not be provided to third parties unless VWE is obligated to do so on the basis of a court order. Third parties do not include companies affiliated with VWE.
- 3.9 Code of Conduct**
- 3.9.1** Customer will make use of VIS and/or other facilities offered in a responsible manner. It is prohibited to use VIS and/or other facilities offered in a manner that will result in:
- a) damage to the Infrastructure;
  - b) interference with its use.
- 3.9.2** Customer will ensure that such damage and/or interference is not the result of misconfiguration on Customer's part.
- 3.9.3** It is not permitted to use VIS and/or other facilities offered for activities that are illegal and/or in violation of the agreement. The foregoing includes amongst others the following activities:
- a) the violation of a third party's rights or making it possible to violate third party rights, such as but not limited to intellectual property rights and privacy rights;
  - b) the noncompliance to law and other applicable regulations;
  - c) spamming [un-requested distribution (or creating the possibility for third parties) of advertisement and/or other messages];
  - d) storage/distribution of (child) pornography;
  - e) sexual intimidation, racial prejudice, and/or the harassment of individuals in any other manner;
  - f) distribution or the making available to third parties of obscene, insulting, or tormenting material and/or other material of a similar nature;
  - g) threats;
  - h) storage and distribution of viruses, worms, and/or other destructive activities;
  - i) unauthorized access (hacking) of accounts, systems,

and/or networks of third parties and/or VWE and/or the performance of an action or inaction that makes hacking possible.

- 3.9.4** VWE reserves the right, in its own discretion, if forced by law or a court order and/or a third party informs VWE of and/or a suspicion exists that through the ASP-service a violation is made of the rights of a third party, there is a breach of the General Conditions VWE Automotive Solutions and/or the agreement and the resulting obligations in question have not been met wholly or partially, to stop access to the ASP-service and/or other facilities offered, to remove the information in question, and/or suspend its other obligations; this until the obligations have been met.
- 3.9.5** VWE and/or third parties will never be liable for damage of whatever nature suffered by Customer or third parties for measures taken by and/or on behalf of VWE on the basis of article 3.9.4. Payment obligations will remain in effect during the time period in which measures are undertaken by and/or on behalf of VWE on the basis of article 3.9.4.
- 3.9.6** If the actions and/or inaction of Customer justifies this and/or the actions and/or inaction of Customer continues regardless of the measures under taken by VWE, as set out in clause 3.9.4, VWE will be entitled in accordance with clause 1.5.7 to dissolve the agreement, without any damage compensation or restitution of monies paid being required.

#### **4. MARKETING SERVICE AND POSITIONING SERVICE**

##### **4.1 Marketing and Positioning**

- 4.1.1** If agreed upon in writing, VWE may, with regard to products and services from Customer:
- include/place these products and services from Customer on the VWE website and make them available or accessible for clients and/or End-users, while observing clause 4.1.2;
  - include/mention these products and services in the standard product and service price list of VWE, while observing clause 4.1.2;
  - market, advertise, and/or promote these products and services.
- 4.1.2** With regard to offering or making Customer's products and services available, VWE will operate as a 'passive conduit' or a party that makes it possible for clients or End-users to obtain the relevant products and services from Customer. In light of this there is no resale of Customer's products and services by VWE, unless agreed upon otherwise.
- 4.1.3** VWE will charge Customer a one-time implementation fee for the implementation of the Marketing Service and Positioning Service and the adjustment of its website, pricelist, procedures, etc.
- 4.1.4** If, in the opinion of VWE, technical adjustments are necessary to the VWE website, VWE Products and/or Customer's software applications, VWE may develop a custom made adjustment/solution in accordance with clause 2.10 at Customer's cost.
- 4.1.5** VWE will strive for an optimal positioning, implementation, and functioning of Customer's products and services within the VWE website or VWE Products. If VWE

positions a software product from Customer or includes it in its website and/or VWE Products, VWE will in no way be liable for Errors and/or malfunctions (whether or not in combination with VWE Products) with regard to this software product.

- 4.1.6** If agreed upon in writing, VWE may with regard to Customer's products and services provide certain VWE services against payment, such as:
- housing and hosting of software applications on the VWE Infrastructure and/or Data files of Customer;
  - support for Clients and/or End-user; and/or
  - Administrative services as further set out in clause 5.
- 4.1.7** With regard to software applications positioned and/or made accessible via the VWE website and/or VWE Products, VWE explicitly does not make a managed infrastructure available.
- 4.1.8** VWE determines if and when a (changed) service and/or product is suitable for marketing and/or positioning by VWE and with which technical, functional, and price specifications the products and services must comply. VWE is thus entitled to decline the marketing and/or positioning of Customer's products and/or services or the marketing and/or positioning of updates and/or new versions of Customer's products and/or services.
- 4.1.9** VWE determines independently and in its own discretion which (combination of) marketing tools will be used and with which frequency, as well as where and how Customer's product and/or service will be positioned on the VWE website and/or in the VWE Products.
- 4.1.10** Unless agreed upon otherwise, VWE retains the right at all times, without giving cause and without being obligated to pay any form of (damage) compensation to Customer and/or third parties, to immediately terminate the Marketing Service and/or Positioning Service.
- 4.1.11** Customer's services and products are and shall remain the intellectual and industrial property of Customer. Customer is responsible for maintenance and development of its products and services and must conform as much as possible to the most current release calendar as maintained by VWE and the test and implementation periods set by VWE.
- 4.1.12** Customer warrants that its products and services:
- do not infringe the intellectual and industrial property rights or other rights of a third party or are in any other manner unlawful towards any third party;
  - function efficiently, soundly, and correctly.
- 4.1.13** Customer will indemnify VWE from actions of third parties, where these are based on the fact that the (use of) Customer's products and/or services breach the intellectual property rights or any other right of a third party and/or in any other way (whether or not through VWE) cause damage to a third party.
- 4.1.14** VWE is and shall remain the rightful owner of all rights with regard to the VWE customer base which amongst others is also understood as or shall include the clients and/or End-users that acquire Customer's services and products through/via the VWE website or the VWE Products.
- 4.1.15** Customer hereby provides VWE the non-exclusive right to use Customer's products and/or service and other rights regarding Customer's products and/or services necessary in VWE's opinion to rightfully carry out and/or deliver the

Marketing Service and Positioning Service as set out in clause 4.1.1. VWE also hereby receives the right from Customer to use the trade name and/or logo from Customer in its electronic or written publications and communication with third parties.

- 4.1.16** In order for VWE to carry out the Marketing Service and Positioning Service, Customer shall in a timely manner and for free provide VWE with all the necessary means and information which amongst other includes (technical and functional) product documentation, instruction manuals, and training of VWE employees with regard to Customer's products and services at VWE's location.

## **5. ADMINISTRATIVE SERVICES**

### **5.1 Authentication, identification, and administration**

- 5.1.1** If agreed upon in writing, VWE may carry out further to be agreed upon administrative services for payment on behalf of Customer with regard to:

- a) the processing of registration forms from Clients with regard to services and products from and/or via Customer;
- b) the authentication and identification with regard to (the scope of) the use of products and services from and/or via Customer.

- 5.1.2** VWE will strive to perform the above mentioned administrative services to the best of its ability and to prevent Errors, however in no event will VWE accept liability for possible Errors.

### **5.2 Invoicing service**

- 5.2.1** If agreed upon in writing, VWE may carry out the following services with regard to products and services from and/or via Customer, against payment:

- a) Invoice clients in bulk or specified per End-user;
- b) Invoice End-users directly on behalf of and in the name of Customer.

- 5.2.2** VWE sends invoices based on the invoicing service in accordance with the invoicing cycle as set and maintained by VWE.

- 5.2.3** VWE is never responsible for the actual collection of monies owned to Customer. VWE only identifies and registers the use (by End-users) of Products, thus providing information on the basis of which invoices can be sent. If payment is not made, for whatever reason, after an invoice has been sent by VWE on behalf of Customer, this will be for the risk of Customer and in no event will VWE be responsible for the actual collection of payments on behalf of Customer or be obligated to pay any form of (damage) compensation to Customer or third parties.

- 5.2.4** VWE will strive to perform the above mentioned invoicing services to the best of its ability and to prevent Errors, however, in no event will VWE accept liability for possible Errors.

## **6. THIRD PARTY PRODUCTS**

### **6.1 Third Party Products**

- 6.1.1** VWE has the right to deliver Third Party Products or make use of Third Party Products in fulfilling its obligations that

may flow forth from the agreement. VWE is not responsible for Third Party Products, unless agreed upon otherwise in writing.

- 6.1.2** If VWE delivers Third Party Products to Customer, the Third Party General Conditions will be applicable to the agreement in addition to these General Conditions VWE Automotive Solutions.

- 6.1.3** VWE will deliver rights regarding Third Party Products under the same conditions as given in the Third Party General Conditions.

- 6.1.4** No Maintenance, Support, or other services will be carried out by VWE on Third Party Products, unless agreed upon otherwise in writing.

### **6.2 Third Party General Conditions**

- 6.2.1** Third Party General Conditions that are declared applicable in these General Conditions VWE Automotive Solutions shall, when available to VWE, only be provided on request. Third Party General Conditions will be delivered in the same format and language as received by VWE.

- 6.2.2** The General Conditions VWE Automotive Solutions have priority over Third Party General Conditions unless indicated otherwise. When there is conflict between the General Conditions VWE Automotive Solutions and Third Party General Conditions, VWE has the right to declare the conflicting terms of the Third Party General Conditions applicable or inapplicable.

## **7. DELIVERY**

### **7.1 (Delivery) Dates**

- 7.1.1** All (delivery) dates which may be named by and may be applicable to VWE are determined to the best of VWE's knowledge on the basis of information made known to VWE at the moment of entering into the agreement and will be taken into consideration as much as possible.

- 7.1.2** (Delivery) dates shall therefore not be considered to be absolute (delivery) dates within which must be delivered, but a time period within which VWE shall strive with best efforts to deliver the agreed upon items. If it is not possible to keep to the (delivery) date, then VWE and Customer will consult with each other to agree on a substitute (delivery) date.

- 7.1.3** Exceeding a given (delivery) date which may be applicable never constitutes an attributable shortcoming by VWE. VWE does not accept liability under any circumstances in cases where the (delivery) date may be exceeded.

### **7.2 Reservations**

- 7.2.1** VWE shall commence execution of the agreement between VWE and Customer only after a signed copy of the agreement drawn up by VWE has been received by VWE, Customer conforms to conditions applicable to the Authorization Procedure (clause 1.5.2), Customer, in the opinion of VWE, strives towards a legitimate goal (clause 1.5.3), and/or having received payment of all amounts due fully and on time. Should VWE commence execution of the agreement prior to receiving a signed copy of the agreement and/or having received payment of all amounts due fully and on time, VWE reserves the right to suspend execution of the agreement pending receipt of a signed

copy of the agreement and/or payment of all amounts due fully and on time.

**7.2.2** Customer's rights, such as but not limited to the transfer of Products, are provided under the suspended condition that Customer pays the agreed compensations fully and on time. In case of failure to pay, Customer must return the Products to VWE at Customer's expense within one week of receiving the instruction from VWE to do so. All other remedies in law remain applicable.

**7.2.3** If Customer fabricates a new product, on the basis of the Products delivered by VWE, this will be done on behalf of VWE and Customer will keep the new product for VWE until all amounts due on the basis of the agreement have been paid fully and on time. VWE will maintain all the rights as owner of the new product until the moment payments have been made fully and on time.

### **7.3 Risk**

**7.3.1** From the moment of delivery Customer will bear the risk of the Products delivered even if possible ownership and user rights have not yet been transferred. As a result Customer will be held accountable for full payment of the Products delivered regardless of the situation that the Products delivered have perished or that their value has declined due to circumstances for which VWE cannot be held accountable.

**7.3.2** The aforementioned will also be applicable from the moment at which Customer does not make it possible for VWE to make a delivery.

### **7.4 Delivery, Installation, and Acceptance Procedure**

**7.4.1** VWE shall deliver the Products to Customer in accordance with the specifications established in writing by VWE and, if desired by Customer, install them.

**7.4.2** Delivery of the Products takes place when they are made available to Customer at VWE's warehouse. The costs for transport and possible insurance are for the account of Customer. The manner in which transport takes place is determined by VWE and insurance of the Products by VWE will not take place unless agreed upon otherwise in writing.

**7.4.3** The delivery of services by or through VWE takes place at the place and time that the services are performed.

**7.4.4** An acceptance period is only applicable in the event that installation is carried out by VWE. The acceptance period commence immediately following completion of the installation. The acceptance period for Customer runs for 14 (fourteen) days following completion of the installation. During the acceptance period, Customer is not permitted to use the Products for production and/or operational purposes.

**7.4.5** The Products shall be considered by both parties as accepted:

- a) upon delivery if the installation is not carried out by VWE; or
- b) upon the first day following the acceptance period if VWE has completed the installation; or
- c) upon repair of the Errors (clause 7.6) indicated in the Test Report (clause 7.5) if the Test Report is received before the end of the acceptance period; notwithstanding the presence of small Errors which according to clause 7.6.4 do not hinder acceptance.

**7.4.6** If the Products are delivered and tested in phases and/or

parts, the non-acceptance of a particular phase and/or part will not delay the acceptance of an earlier phase and/or another part.

**7.4.7** Contrary to above, the Products shall be considered as accepted if Customer uses the Products for productive or operational purposes in any manner before the moment of acceptance. Acceptance shall be considered as from the beginning of such use.

### **7.5 Test Report**

**7.5.1** If it becomes apparent during the acceptance period that the Products contain Errors, as described in clause 7.6, which hinder the progress of the acceptance test, Customer shall inform VWE of the Errors no later than the last day of the acceptance period in a written and as detailed as possible Test Report, in which case the still remaining acceptance period will be interrupted until such time as the Product is so modified that the Errors are removed.

### **7.6 Errors**

**7.6.1** Error(s) means the failure to fulfill the functional specifications set down in writing by VWE and, in cases of developing custom work VWE Products, the functional specifications expressly agreed upon in writing and, in the case of Data (files), incorrect data/fields and/or the non-compliance to coverage area as communicated by VWE regarding the completeness of the Data (files) and/or data/fields and, in case of Administrative services according to clause 5, incorrect and/or incomplete data. An Error only exists where such can be demonstrated and reproduced. The Customer is required to immediately report possible Errors to VWE.

**7.6.2** Every right to repair of Errors lapses if the Products provided by VWE are altered in any way or form.

**7.6.3** The repair of Errors shall take place at the location to be determined by VWE. VWE is entitled to install temporary solutions, emergency solutions, detours, and/or other problem-avoiding restrictions in the Products.

**7.6.4** Acceptance of the Products may not be withheld on grounds other than those which are related to specifications which have been expressly agreed upon between the parties nor, furthermore, due to the presence of small Errors which do not reasonably impede putting the Products into productive or operational use.

### **7.7 Replacement Performance**

**7.7.1** VWE is permitted to deliver alternative Products than those Products ordered by Customer if the performance and operation of such alternative Products is essentially no different from the Products ordered.

**7.7.2** If the agreement is closed with the objective of having activities carried out by a particular individual, VWE will be entitled to replace this person with another person with the same qualifications.

### **7.8 Warranty**

**7.8.1** VWE shall strive to repair any Errors, as defined in article 7.6, to the best of its ability, provided these Errors have been reported in detail in writing to VWE. At its sole discretion VWE is entitled at its expense to repair, modify, or replace the Products. In the event Errors are a result of a service, VWE will provide alternative services.

**7.8.2** VWE is entitled to invoice its usual prices and the costs

for repair, modification, or replacement of the Products if the Error may be said to be caused by mistakes made by the Customer, the result of improper and non-careful use by the Customer, or the result of other causes that may not be attributed to VWE.

**7.8.3** The Warranty does not cover the reconstruction and/or repair of mutilated and/or lost data and/or information. VWE does not warrant that the Products shall function without interruption or without Errors, are suitable for every intended use of Customer, and/or will lead to results desired by Customer. The Warranty obligation is void if the Customer alters the Products, or has them altered, without the written permission of VWE.

**7.8.4** The Warranty provided on Third Party Products is limited to the Third Party General Conditions as maintained by the supplier of Third Party Products as described in clause 5.2.3.

## **8. PRICES/PAYMENT**

### **8.1 Prices and Payments**

**8.1.1** All prices exclude VAT and other levies imposed by the government. The amounts invoiced to Customer will include applicable VAT and other levies possibly imposed by the government.

**8.1.2** VWE will invoice the amount, appropriately itemized, owed by Customer on a monthly basis to Customer. Customer will pay all amounts indebted within 14 (fourteen) days of the invoice date. These payments will not be subject to compensation or deduction other than when permitted by law.

**8.1.3** Should Customer fail to fulfill any obligation, Customer is in breach without any further warning or notification of breach being required. VWE reserves the right to charge all incurred costs to Customer, including judicial and extra-judicial expenses, with regard to the collection of debts from Customer. Extra-judicial collection costs amount to 15% of the debt, with a minimum of € 100 (one-hundred Euros). In any case Customer will be charged interest on a monthly basis, at the legal percentage rate, on all outstanding debts starting from the date of failure to pay.

**8.1.4** Until full payment has been made, VWE has the right to suspend all services and other obligations to Customer and/or stop access to the Products by Customer. The Customer's obligation to meet Customer's commitments remains unchanged. If Customer, after being denied access to the Products, would like to make use of the Products, VWE is entitled to charge reactivation costs to Customer.

**8.1.5** If VWE is unable to make a delivery in time due to Customer, VWE will have the right to charge a 1.5% interest reimbursement on a monthly basis over the indebted amount.

**8.1.6** Compensation for Subscriptions, ASP-service, Marketing Service, Positioning Service, Maintenance, Support, and any other annual or periodic amounts are due as an Advance at the moment of realization of the agreement between the parties and shall be billed to Customer, appropriately itemized, prior to each year or other period that the agreement between parties continues. Messages

or data obtained from (or via Products from) VWE will be charged on the basis of Subsequent Calculation to Customer.

**8.1.7** The indebted amount in clause 8.1.1 may be increased with order costs, postage costs, and costs of third parties. An increase can also take place in the event that activities have to take place outside of VWE's office. In the event that activities need to take place outside of VWE's office, hourly rates, travel and waiting time compensations, actual travel and/or kilometer compensation, hotel expenses and any other costs connected to such services will be charged. The travel and waiting time compensation amounts to 50% of the current hourly rate. The means of transportation will be determined by VWE. The foregoing is also applicable on services provided outside of The Netherlands.

**8.1.8** Above mentioned paragraphs leave all the legal rights of VWE unhindered, when Customer fails to meet Customer's commitments.

### **8.2 Price Changes**

**8.2.1** The prices agreed to between VWE and Customer are among other things based on the costs of salaries, social premiums, materials, Data (files), VWE Infrastructure, Third Party Products purchased, data communication lines and travel and accommodation costs, etc., as well as the rate of exchange between the currencies as applicable at the time of closing of the agreement. VWE is authorized, in case of changes and/or increases to one or more of the cost items as a result of altered or new legislation or other regulations and/or changes in the rate of exchange, changes to the Consumer Price Index (CPI) (all households, 2006 = 100) or the CBS (Dutch Bureau for Statistics) index business services (Software consultancy), to adjust the prices to these changes. VWE shall at a minimum increase the prices annually, on January 1<sup>st</sup>, based upon the rate 'CBS Price index Software Consultancy' as published by CBS on January 1<sup>st</sup> (and thus possibly based upon third quarter information).

**8.2.2** VWE will offer Customer the possibility to become acquainted with possible changes in prices. If Customer does not agree with a price change, Customer will only be permitted to terminate the agreement from the date the change in price becomes applicable, if the total price increase during 1 (one) year exceeds the yearly inflation rate of the current year (or previous year for price increases announced for the next year) as published by the CBS (Dutch Bureau for Statistics) by 10%.

### **8.3 Claims**

**8.3.1** Claims with regard to the incorrect execution of assignments and/or Errors in the Products must, in accordance with clauses 7.6 and 7.8, immediately but no later than 5 Business Days after discovery of the Error, be reported to VWE in writing. After this period the right to make claims expires.

### **8.4 Fixed Price**

**8.4.1** In the case of a Fixed Price agreement, activities will be performed on the basis of a prior agreed upon price.

**8.4.2** Unless VWE can appeal to clause 1.6.4 extra hours will



not be charged.

## **8.5 Subsequent Calculation**

**8.5.1** When charges are to be based on Subsequent Calculation, this means that prior to VWE commencing the activities agreed to a global estimate can be made of the expected costs. On conclusion of the activities carried out, all costs actually incurred related to the activities will be calculated and charged. The Customer is, then, aware that there is a possibility that the estimate made earlier could be lower than the costs actually incurred. If no agreements have been made regarding billing, activities will be performed on the basis of Subsequent Calculation.

## **8.6 Advance**

**8.6.1** VWE has the right to charge payments in Advance. If full payment of the Advance is not made, VWE has the right, undiminished its other rights that may flow forth from the agreement, to suspend all its obligations and all amounts owned by Customer will be immediately due.

# **9. INTELLECTUAL PROPERTY RIGHTS**

## **9.1 Rights of VWE and Customer**

**9.1.1** Nothing in any agreement with VWE shall constitute the transfer of any (intellectual or industrial) property rights to Customer, unless explicitly agreed upon in writing.

**9.1.2** VWE has the exclusive right to further develop the VWE Products and place them at the disposal of third parties by means of licenses.

**9.1.3** Except where Third Party Products are concerned, all intellectual property rights, industrial property rights and other rights resulting from all activities carried out by VWE, regardless of where and when carried out and regardless of whether it concerns the delivery of an existing Product or a still-to-be-developed Product, reside with VWE.

**9.1.4** Customer acknowledges that all present and future intellectual property rights, industrial property rights, other rights and the registration and/or application of the foregoing rights and/or similar rights for the whole term thereof and all renewals or extensions thereof, now or at any time in the future worldwide at all times shall be and are hereby assigned or will be transferred to VWE.

**9.1.5** Customer is not permitted to remove or alter any designation concerning intellectual property rights, industrial property rights, other rights, trademarks and trade names from the Products, or to have such changes made by third parties.

**9.1.6** The intellectual property rights, industrial property rights or other rights of a Product, or a part thereof, can only be transferred to Customer by means of a written deed, if VWE has these rights.

**9.1.7** In the event that VWE, Customer or a third party makes functional improvements or other adjustments in the Products the intellectual property rights, industrial property rights and other rights vested in the improved or adjusted Product will remain unchanged with VWE or the rightful third party. If the above mentioned rights do not belong to VWE or the rightful third party, Customer will cooperate in transferring the above mentioned rights to VWE or the

rightful third party.

## **9.2 Indemnification**

**9.2.1** VWE shall protect Customer from any allegation to the effect that the VWE Products violate a copyright valid in The Netherlands. VWE shall pay the damages, expenses, and court costs that Customer is ordered to pay by the final court ruling, provided that Customer:

- d) notifies VWE immediately, but no later than within 10 (ten) days, after Customer becomes aware of the infringement or could have become aware of the infringement, in writing of the existence of the allegation of infringement; and
- e) gives the case completely over to VWE, including settlement negotiations.
- f) In case of any such allegation or possible allegation, VWE reserves the right to obtain a license or sub-license on the VWE Product in question or to change or replace the VWE Product in such a way that the VWE Product will no longer infringe a copyright valid in The Netherlands. If, at VWE's sole judgment, the foregoing remedies are not a reasonable option, VWE has the right to take the delivered VWE Product back against reimbursement of payments made for the VWE Product in question, minus a reasonable compensation for having made use of the VWE Product.

**9.2.2** VWE shall not indemnify Customer against an action in the event that:

- g) such is based on the fact that the Third Party Products provided to Customer violate an intellectual property right, industrial property right or other right valid in the Netherlands or elsewhere;
- h) what is provided by Customer is part of or is delivered in conjunction with a Product and this combination results in a violation of an intellectual property right, industrial property right or other right valid in the Netherlands or elsewhere;
- i) Customer has made a change in or to the Product.

**9.2.3** If VWE and Customer agree that the intellectual property rights, industrial property rights or any other rights of a VWE Product, or a part thereof, shall be transferred to Customer, Customer will indemnify VWE against any action insofar as such is based on the fact that the Product, or a part thereof, violates an intellectual property right, industrial property right or any other right belonging to a third party.