

**Consultancy Conditions itsme**

Below please find the Consultancy Conditions of itsme. These are divided in 2 chapters. Chapter 1 always applies to the Agreement with itsme concluded by you. Chapter 2 applies in addition to Programming and Engineering

**CHAPTER 1: GENERAL PROVISIONS**

**1. Definitions**

- *Additional Provisions: the provisions laid down in chapter 2;*
- *Customer:* the Party which enters into an Agreement with itsme;
- *General Provisions: the provisions laid down in chapter 1;*
- *General Terms and Conditions: the provisions laid down in chapters 1 and 2;*
- *Additional Costs:* the costs incurred for supervision and/or travel an accommodation expenses;
- *Consultancy Conditions:* these general terms and conditions for the performance of services by itsme;
- *Third Party:* a party employed by the Customer or itsme for the purpose of implementation of the Agreement;
- *Documents:* information carriers in whatever form;
- *Engineering:* the Agreement pertaining to the order to (co)development of an Object;
- *IP rights:* intellectual property rights;
- *itsme:* itsme B.V., itsme Lighting Technology and itsme Industrial Automation, all with their registered office at (4941 VR) Raamsdonksveer (NL) in 2 Steurweg;
- *Object:* the product of a tangible nature to be designed by itsme within the framework of an Agreement;
- *Agreement:* the Agreement between itsme and the Customer;
- *Party/Parties:* itsme and/or the Customer;
- *Programming:* the Agreement pertaining to the order to programming of goods belonging to the Customer;
- *Written:* dispatch by mail, facsimile transmission or by e-mail;

**2. Applicability**

- 2.1 The Consultancy Conditions apply to all offers, quotations, deliveries and services rendered, invoices, Agreements and other aspects of legal relations between itsme and the Customer. itsme herewith expressly rejects any applicability of general terms and conditions of the Customer.
- 2.2 Nullity or annulment of one or more provisions of these Consultancy Conditions will not impede the applicability of the other provisions. itsme and the Customer shall enter into consultation to replace provisions which are null and void or which have been annulled by provisions which to the best possible extent are in line with the purpose and the purport of the provisions which are null and void and/or which have been annulled.
- 2.3 In the event of any conflict between the provisions of the Agreement and the Consultancy Conditions, the provisions of the Agreement shall prevail. The Dutch version of these Consultancy Conditions shall prevail before any translations.
- 2.4 In the event of any conflict between the General Provisions and the Additional Provisions, the Additional Provisions shall prevail. The Dutch version of the General Provisions shall prevail before any translations.
- 2.5 itsme reserves the right to amend and/or to make additions to these Consultancy Conditions. In the event of an amendment or addition, itsme shall inform the Customer that the amended/added conditions are available for inspection on itsme's website.

**3. The Agreement**

- 3.1 Quotations and (price)offers by itsme may be revoked or changed by itsme.
- 3.2 Prices are exclusive of VAT and other government levies and are expressed in euros.
- 3.3 If itsme has made an offer, the Agreement is established by acceptance of itsme's offer by the Customer or by (partial) implementation of the Agreement by itsme. Acceptances of an offer by itsme by the Customer shall be valid as irrevocably done and may not be withdrawn or amended otherwise than with itsme's Written consent.
- 3.4 If itsme has made no offer, the Agreement is established by the Written acceptance of a quotation or the implementation of the Agreement of the Customer by itsme.
- 3.5 The Parties shall agree in Writing on a fixed Order Amount ("Order Amount") or on the free per time unit to be charged for function groups or employees involved in the Agreement ("Fee"). If there is a fixed Order Amount, this Order Amount shall be deemed exclusively for payment of the activities which are described in detail in the Agreement. If a Fee is charged, time spent shall be interpreted to mean the sum of all time units which have been spent to fulfilling the Agreement. itsme shall charge any Additional Costs separately.
- 3.6 If the Parties have agreed on a time schedule for the implementation of the Agreement, the terms included in said time schedule constitute no fatal terms.

**4. General Obligations of Customer**

- 4.1 The Customer is responsible for both the timely provision and the correctness of the information, data and decisions provided to itsme by or on behalf of the former which are required for adequate fulfillment of the order. The Customer shall indemnify itsme against third-party claims with respect to this/these information, data and decisions.
- 4.2 The Customer shall assess documents issued by itsme when fulfilling the order in a timely manner and certify them as such after approval.

4.3 The Customer is obliged to warn itsme in due time if the former has indeed noticed itsme's failure in its advices or must have been aware of this.

**5. Third Parties**

- 5.1 If itsme in the implementation of the Agreement, whether or not as a coordinator, cooperates with other third parties employed by the Customer, its responsibility will be limited to its own share in the Agreement, as it is laid down in Writing.
- 5.2 The Parties shall establish in mutual consultation which itsme will act as the coordinator and is responsible for the coordination of the activities of the various consultants and which itsme is responsible for controlling the process of the activities of the various consultants. itsme is entitled to charge its costs incurred pursuant to its coordinator role separately to the Customer.
- 5.3 itsme is entitled to outsource the implementation of (a part of) the Agreement at its own expense to one or more Third parties if such in itsme's opinion is necessary for the correct implementation of the Agreement.

**6. Amendments**

- 6.1 Parties shall enter into consultation about amendments to the Agreement, if:
- a) there are amendments to the basic principles or other circumstances on which the Agreement was based;
  - b) adequate fulfillment of the Agreement requires additional activities.
- 6.2 If there are amendments with respect to the establishment of the Agreement and these result in an increase of the volume of the activities to be performed and/or additional costs for itsme, itsme shall report this to the Customer and
- a) the Customer shall be due the Fee for the additional hours spent because of said amendment, or - in the event of a fixed Order Amount – the Order Amount shall be adjusted proportionally to these additional hours spent; and/or
  - b) the term for performing the services arising from the Agreement shall be extended proportionally to the amendment to the Agreement.
- 6.3 itsme reserves the right to early replacement of the persons who are referred to in the quotation on which the Agreement is based as the persons who implement the Agreement by other persons, without itsme being held to adjust the agreed on Fee and/or the Order Amount.

**7. IP Rights**

- 7.1 All IP rights with respect to the Object, the Programs and/or Documents which are handed over by itsme to the Customer within the framework of the Agreement, are vested with itsme, or, if applicable, with its licensor(s) or supplier(s).
- 7.2 The Customer only acquires those rights of use to the Objects, the Programs and/or Documents which have been granted by these Consultancy Conditions and the Agreement. Any right of use granted to the Customer is non-exclusive, nontransferable and not to be sub-licensed. Subject to the purpose for which the rights of use have been made available to the Customer, itsme's Object, Programs and/or Documents may not be reproduced, made public or used otherwise without itsme's explicit consent.
- 7.3 If it has irrevocably been established in court that the Object, Programs and/or Documents developed by itsme infringe any third-party IP right or if in itsme's opinion there is a good chance that such infringement will occur, itsme at its discretion will:
- a) take back the Object, Programs and/or Documents delivered on the basis of the Agreement crediting the Fee and/or Order Amount paid by the Customer after deduction of a reasonable payment for use; or;
  - b) ensure that the Customer can continue using the Object, Programs and/or Documents delivered or their functional equivalents without any disturbance;
- 7.4 The preceding paragraph does not affect itsme's limitation of liability as laid down in article 11 of these General Terms and Conditions at all.
- 7.5 The Customer herewith guarantees that the (implementation of the) Agreement, including the use of data and materials provided to itsme by the Customer, constitutes no infringement of any third-party right. If itsme has its reasons to doubt the legitimacy of the publication and reproduction of the data supplied by the Customer or the implementation of the Agreement, it is entitled to suspend its obligations until the Customer proves to itsme's satisfaction to be entitled to said publication and reproduction and that the implementation of the Agreement is legitimate.
- 7.6 If itsme at the Customer's request employs third-party activities or other third-party products with respect to which IP rights may be enforced, the Customer shall ensure that the required authorizations from such third parties are obtained.

**8. Force Majeure**

- 8.1 If itsme is (temporarily) not able to implement the Agreement as a result of force majeure, it is authorized to suspend the implementation of the Agreement entirely or partially for the time of the force majeure in question, without itsme being held to pay any compensation.
- 8.2 itsme is also entitled to invoke force majeure, if the circumstance which obstructs (further) fulfillment occurs after itsme should have fulfilled its obligation.
- 8.3 Force majeure shall at any rate include to mean: transport problems, quota restrictions and operational failures, such as (partial) unavailability of servers with itsme and/or itsme's suppliers, not granting of required permits or non-execution of other formalities by

- government institutions of whatever nature, absence of staff due to sickness or otherwise, and breach of contract by the above-mentioned suppliers as a result of which itsme cannot fulfill its obligations.
- 8.4 If the force majeure in question lasts longer than 60 days, both parties are authorized to terminate the Agreement entirely or partially in Writing, in that case without any obligation of compensation being due. Anything already fulfilled on the basis of the Agreement, is to be set off proportionally.
- 9. Termination**
- 9.1 The Parties are authorized to terminate the Agreement entirely or partially with due observance of a notice period of 4 (in words: four) weeks by way of a Written notice for the attention of the other Party.
- 9.2 In addition, itsme is authorized at its discretion to suspend the implementation of the Agreement entirely or partially or to dissolve the Agreement entirely or partially by way of a Written statement without judicial intervention and with immediate effect, without itsme being held to pay any compensation, in the event of:
- (a suspicion of) any failure by the Customer in the fulfillment of (one of) its obligations pursuant to the Agreement and/or the Consultancy Conditions;
  - (an application for) suspension of payment or bankruptcy order of Customer;
  - conservatorship order or administration order of Customer;
  - sale, cessation, or termination of Customer's business; withdrawal of Customer's permits which are necessary for the implementation of the Agreement;
  - attachment of a substantial part of Customer's assets;
- 9.3 If the Agreement is terminated, Customer is obliged to pay itsme the following items on the basis of the latter's invoice, calculated on the basis of the accumulated activities at the time of termination:
- the Fee and/or the Order Amount;
  - the Additional Costs;
  - any costs reasonably incurred and to be incurred, pursuant to obligations, which itsme has already entered into for the purpose of further implementation of the Agreement.
  - the damage sustained by itsme as a result of the termination.
- 9.4 Any claims which itsme might have or acquire against the Customer shall become immediately and fully payable after termination of the Agreement.
- 10. Payment Conditions**
- 10.1 itsme invoices the Fee and/or the Order Amount according to the agreed payment schedule or, in the absence of which, in monthly terms proportionally to the progress.
- 10.2 Invoices issued by itsme are to be paid ultimately within 30 days after invoice date by the Customer. Payment shall at all times be effected without any discount, set-off or suspension by the Customer on whatever ground.
- 10.3 If the Customer challenges the correctness of an invoice – or a part of this -, it shall nevertheless be held to timely payment of the unchallenged part. Any challenge of an invoice shall be submitted to itsme in Writing and within 14 days after invoice date. If this term is not observed, the Customer shall be bound to the invoice amount and this invoice amount is deemed to be correct. If the challenged invoice – or the challenged part – turns out to be still due, the Customer shall be due the statutory interest. Any claim shall not discharge the Customer from its payment obligation.
- 10.4 In the event of non-/untimely payment, the Customer will be in default by operation of law, without any demand and/or notice of default being required and itsme is entitled to increase the amount due by the Customer by a monthly default interest amounting to 1%, calculated as of invoice date (calculating any part of a month as an entire month). In addition, the Customer will be charged extrajudicial collection costs established at 15% of the gross invoice value, without prejudice to itsme's right of full compensation of the costs incurred.
- 10.5 Any payments made by Customer will first be debited from the outstanding interest and (extrajudicial) costs and only then from the most mature outstanding invoice.
- 10.6 itsme is authorized to set off its payment obligations towards the Customer entirely or partially against any claim which itsme has or will acquire against the Customer at any time whether or not payable, conditional or subject to a time limit or to suspend its payment obligations.
- 11. Liability and Indemnification**
- 11.1 itsme shall only be liable for compensation of direct damage sustained. itsme's liability for indirect damage sustained (including but not limited to consequential loss, production loss, loss of turnover and/or profit and decline in value of products) is herewith expressly excluded. In addition, itsme's liability shall in all circumstances be limited to the amount which is distributed by itsme's insurance company with respect to the damage which has arisen in the implementation of the Agreement. If there is no insurance to this end and/or if such insurance offers no cover for this, itsme's liability shall be limited to the amount invoiced by itsme for the Agreement to which the damage in question is directly related and at any rate to € 10,000.00 (in words: ten thousand euros).
- 11.2 If the Customer has instructed the employment of a Third party and if the latter fails, the Customer shall compensate the additional costs incurred and damage sustained by itsme, insofar as these have not been compensated by the Third party in question. If the Third party was employed by itsme and the former fails, then itsme shall only be liable for the part of the Agreement executed by said Third party to a maximum amount due by itsme to this Third party pursuant to the Agreement.
- 11.3 The Customer is to report the damage sustained to itsme in Writing on the shortest possible notice however ultimately within 2 weeks after its arising or becoming known. Any damage not reported within this term, shall not qualify for compensation. Any claim by the Customer shall at any rate be null and void by mere expiry of 12 months.
- 11.4 The Customer shall indemnify itsme and its legal successors, its employees and any Third parties employed by the latter for the implementation of the Agreement against any third-party claims which are related to activities performed pursuant to the Agreement.
- 12. Takeover of Contract**
- 12.1 The Customer may not transfer its rights arising from the Agreement to third parties without itsme's prior Written consent.
- 12.2 The Customer agrees with entering in to the Agreement in advance with a transfer of the rights and obligations arising from the Agreement by itsme to third parties. The Customer herewith grants a proxy to itsme to perform all required (legal) actions for the execution of the transfer.
- 13. Secrecy**
- 13.1 The Parties shall mutually treat any Documents provided within the framework of the Agreement as confidential and only make use of these within the framework of implementation of the Agreement. Parties shall not disclose the Documents and the information contained in these to third parties, unless this information is publicly known – without this being caused by a breach of the pledge of secrecy – or is to be made public by virtue of the law, regulations or a court order. The parties undertake to impose the same obligations on persons employed by them in the implementation of the Agreement.
- 14. Takeover of Staff**
- 14.1 Without the Written consent by the other Party, during the term of the Agreement and during a year after its termination, none of the Parties shall negotiate with staff from the other Party who is/has been involved in the implementation of the Agreement about employment or employ them in any other manner, directly or indirectly.
- 15. Settlement of Disputes and Applicable Law**
- 15.1 The Agreement and any ensuing legal relations between itsme and the Customer shall be governed by Dutch law. The Rotterdam Court shall have exclusive jurisdiction to settle any disputes arising from the Agreement.
- CHAPTER 2: PROGRAMMING AND ENGINEERING**
- 16. Development, Technical Requirements & Documentation**
- 16.1 itsme shall perform to the best of its abilities to develop the Object and/or the Programs with due care on the basis of the written specifications provided by the Customer and the functional specifications laid down in writing at the time of establishment of the Agreement.
- 16.2 Any technical requirements made by the Customer to the Object and/or the Programs should be stated by the Customer in Writing at the time of conclusion of the Agreement, failing which itsme shall not be responsible for the Object and/or the Programs to fulfill any technical requirements, norms and/or instructions and/or standards.
- 16.3 itsme shall not be responsible for documentation for the purpose of use of the Object and/or the Programs to be delivered or already delivered.
- 17. Delivery and Installation**
- 17.1 The Customer is deemed to have accepted the Object and/or the Programs at the time of delivery or – if installation of the Object and/or the Programs was agreed on – at the time of completion of the installation.
- 17.2 If the Parties have not agreed on an acceptance test, the Customer shall accept the Object and/or the Programs in their state at the time of delivery and/or installation and therefore with any visible and/or invisible errors and failures.
- 17.3 The Object and/or the Programs and any products arising from these shall be made available to the Customer once, unless the Parties explicitly agree otherwise in Writing.
- 18. Acceptance Test**
- 18.1 If an acceptance test of the Object and/or the Programs to be provided to the Customer pursuant to the Agreement was agreed on at the time of establishment of the Agreement, the test period shall amount to 14 calendar days as of the delivery of the Object and/or the Programs or - if installation of the Object and/or the Programs by itsme was agreed on – as of the completion of the installation. During the test period, the Customer is not entitled to use the Object and/or the Programs for productive or operational purposes.
- 18.2 If an acceptance test was agreed on at the time of establishment of the Agreement, the Customer shall be deemed to have accepted the Object and/or the Programs at the end of the test period. If the Customer uses the Object and/or the Programs for productive or operational purposes during the test period, the Customer shall be deemed to have accepted the Object and/or the Programs as of the start of said use.
- 18.3 If an acceptance test was agreed on at the time of establishment of the Agreement, and the acceptance test has shown errors – in the sense of not fulfilling the functional specifications – which obstruct the progress of the acceptance test, the test period will be interrupted, until said obstruction has been lifted.

18.4 The Customer is not entitled to refuse acceptance of the Object and/or the Programs on grounds which are not related to the (functional) specifications laid down in Writing at the time of establishment of the Agreement nor on the basis of minor errors which do not obstruct the use of the Object and/or the Programs for productive or operational purposes.

**19. Guarantee**

19.1 itsme guarantees that the Object and/or the Programs function(s) properly in connection with current operating systems, programs or devices with respect to which Parties have explicitly agreed the operation in writing. The guarantee does not pertain to any other operating systems, programs or devices.

19.2 itsme shall perform to the best of its abilities to remedy any failures and/or errors in the Object and/or the Programs, which arise within the 3 months' guarantee period after delivery or its acceptance within a reasonable term. Any costs related to this shall be borne by itsme if the Object and/or the Programs has/have been developed at a fixed price and in all other instances by the Customer.

19.3 Remedy of failures shall not take place if:

- a) the failures arise from the environment not fulfilling the required specifications in which the goods delivered are used;
- b) Customer or third parties modify the Object and/or the Programs or try to restore these without itsme's prior Written consent;
- c) the failures arise from inexpert, unauthorized or incorrect use by Customer or third parties;
- d) established failures have not been reported to itsme with due speed;
- e) the goods delivered by itsme are used in combination with goods and/or programs not delivered or approved by itsme;

19.4 itsme shall perform any activities on the basis of this article on its shortest possible notice. If itsme is of the opinion that it is not able to remedy the established failures in an economic viable manner, it is entitled to take back the Object and/or the Programs by refunding the amount paid by the Customer with respect to this.

19.5 Itsme may recover the additional costs incurred and/or damage sustained related to restoring as referred to in this article from Customer if and insofar as said additional costs and/or damage are not the direct consequence of the obligation to restore errors and/or failures in the Object and/or the Programs by itsme, however involve additional activities by itsme. These additional costs concern among others but are not limited to travel and accommodation expenses of itsme's staff, de-installation costs and re-installation costs.

**20. Maintenance**

20.1 itsme shall not be obliged to maintain the Object and/or the Programs delivered pursuant to the Agreement. itsme shall not be obliged to offer or to accept any agreement pertaining to maintenance of said Object and/or Programs.