

## Bechtle General Terms and Conditions

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These are the General Terms and Conditions of the Bechtle group. The Bechtle group comprises the following enterprises: **ARP Nederland B.V.**, Bechtle direct B.V., Buyitdirect.com B.V., Bechtle Group NL Public B.V. (jointly referred to hereinafter as: "Bechtle"). Bechtle supplies a broad range of ICT products and services, including: software, hardware, management, repairs, maintenance, IT support, cloud and hosting services, advisory services, recycling services and webshop services.

These General Terms and Conditions are divided into several sections. Section 1 contains general provisions that apply to all products and services supplied by Bechtle. Sections 2 to 5 contain specific provisions that apply solely to the supply of certain types of products and services.

### General Terms and Conditions:

<b>Section 1. General provisions .....</b>	<b>1</b>
<b>Section 2. Supply of Products .....</b>	<b>9</b>
<b>Section 3. Supply of Software.....</b>	<b>12</b>
<b>Section 4. Hosting and cloud services .....</b>	<b>13</b>
<b>Section 5. Recycling Services .....</b>	<b>15</b>

### Section 1. General provisions

*The provisions set out in this section entitled 'General provisions' relate to all Products and Services supplied by Bechtle and apply to every Agreement between Bechtle and the Customer.*

#### Article 1. Definitions

All capitalised terms in these General Terms and Conditions have, in their singular as well as plural forms, the meanings set out below in this Article.

- 1.1. **Account:** the personal account of the Customer or of an End user, through which he or she can gain access to (parts of) the Products or Services.
- 1.2. **Customer:** the legal entity or natural person acting in a professional or commercial capacity with which or with whom Bechtle concludes an Agreement.
- 1.3. **Service(s):** the services that Bechtle supplies to the Customer, as described in the Agreement.
- 1.4. **End User:** the natural person who uses the Products or Services supplied by Bechtle for the Customer.
- 1.5. **Hardware:** the equipment (including any associated cabling and other accessories) that Bechtle supplies to the Customer, as described in the Agreement.
- 1.6. **Intellectual Property Rights:** all intellectual property rights, including in any case, but not limited to, copyright, database rights, rights to domain names, trade name rights, trademark rights, design rights, neighbouring rights, patent rights as well as rights to know-how.
- 1.7. **Client Data:** all data stored by the Customer or End Users by means of the Products or Services.
- 1.8. **Materials:** all websites, software, applications/web applications, visual identities, logos, flyers, brochures, leaflets, lettering, advertisements, marketing and/or communication plans, drafts, images, texts, sketches, documentation, advice, reports and other intellectual creations, as well as the preparatory material for them and the data carriers on which the materials are located.
- 1.9. **Maintenance:** carrying out repairs, or having repairs carried out, taking preventive measures and inspecting, for preventive or other purposes, the Products and Services, if and insofar as specified in the Agreement.
- 1.10. **Agreement:** the agreement between Bechtle and the Customer pursuant to which Bechtle will supply the Products or Services to the Customer and of which these General Terms and Conditions, including any processing agreement and service level agreement concluded between the Parties, are an integral part.
- 1.11. **Party (Parties):** Bechtle and the Customer jointly or individually.
- 1.12. **Product(s):** all items (corporeal objects) that Bechtle supplies to the Customer, which may also include Hardware, as described in the Agreement.

- 1.13. **Software:** software that Bechtle supplies to the Customer pursuant to the Agreement.
- 1.14. **Support:** providing advice verbally (by telephone) and in writing concerning the use and operation of the Products and the Services.
- 1.15. **Confidential Information:** all non-public information relating to one or both Parties and information in relation to which a Party states that this information is confidential or that, by virtue of the nature of the information or in the circumstances in which it is disclosed, must be treated as confidential.
- 1.16. **Webshop(s):** the webshop set up and hosted by Bechtle for the Customer (personally), accessible via the internet or via a link to the system of the Customer, within which the Customer (or its End Users) can directly purchase Hardware and, insofar as applicable, Software, from Bechtle.

## Article 2. Applicability and interpretation

- 2.1. The General Terms and Conditions apply to all offers and quotations of Bechtle, the performance of work by or in the name of Bechtle and all (future) Agreements.
- 2.2. The applicability of any purchase conditions or other terms and conditions of the Customer is expressly excluded.
- 2.3. The Agreement may comprise several documents. In the event of any conflict between documents, the order of precedence set out below (in which the documents listed higher in the ranking shall prevail over the documents listed lower in the ranking) shall apply:
  - a) any other agreements in writing made between the Parties;
  - b) an approved quotation or an approved offer;
  - c) any service level agreement concluded between the Parties;
  - d) any processing agreement concluded between the Parties;
  - e) any service description documents pertaining to the Service;
  - f) these General Terms and Conditions.

- 2.4. In the event of any conflicts between the sections of these General Terms and Conditions, the last section shall prevail at all times.
- 2.5. Insofar as the various parts of the Agreement do not contain any conflicts, they shall apply on a mutually complementary basis.

## Article 3. Formation of the Agreement

- 3.1. The Agreement shall be formed at the time of sending of Bechtle's written confirmation of the work following receipt of the Customer's acceptance of an offer or quotation.
- 3.2. All offers and quotations provided by Bechtle shall be non-binding and shall be valid for a period of (30) days after their date. An Agreement shall likewise be formed if the Customer accepts an offer or quotation after expiry of the period of validity and Bechtle confirms this acceptance expressly and in writing.
- 3.3. If Bechtle has issued an offer on the basis of information provided by the Customer and that information proves to be inaccurate or incomplete, Bechtle shall be entitled to dissolve or terminate the Agreement, or to adjust the offer and the prices in line with this, even after an Agreement has been formed.
- 3.4. If the Customer does not formally approve Bechtle's offer but nonetheless gives rise to that impression (for instance, by having Bechtle already carry out some work), the offer shall likewise be deemed to have been accepted by the Customer.
- 3.5. In derogation from the provisions in Section 6:225(2) of the Dutch Civil Code, Bechtle shall not be bound by an acceptance at variance with the offer issued, not even if the difference relates to minor points of the offer.
- 3.6. The Agreement comprises a full description of the rights and obligations of the Parties and supersedes all previous written and verbal agreements, declarations, statements and actions of the Parties.

#### **Article 4. Performance of the Agreement**

- 4.1. Following the formation of the Agreement, Bechtle will endeavour to perform the Agreement within the agreed time schedule, or within a reasonable term if no time schedule has been agreed. Any delivery or other periods stated by Bechtle and deadlines set shall be indicative and not apply as strict deadlines, unless the Parties expressly agree otherwise. A failure to comply with the stated delivery or other periods shall not entitle the Customer to cancel the order or to refuse receipt or payment of the Products or Services ordered nor does this oblige Bechtle to pay any compensation to the Customer.
- 4.2. Bechtle is entitled to engage third parties for the performance of the Agreement. Any associated costs will only be for the Customer's account if this has been agreed in advance.
- 4.3. On Bechtle's request, the Customer shall provide every reasonable cooperation as well as all information and Materials in relation to which Bechtle states that they are required for the performance of the Agreement. Such cooperation may also relate to providing access to necessary accounts, digital environments and physical locations.
- 4.4. The Customer shall follow all reasonable instructions given by Bechtle in connection with the performance of the Agreement.

#### **Article 5. Contract Extras**

- 5.1. If the Customer requests supplementary work or services falling outside the scope of the Agreement, i.e. requests contract extras, the Parties will consult on this and Bechtle can prepare a supplementary offer for this. Bechtle will not carry out the contract extras until the Customer has accepted the offer. Bechtle is entitled to refuse a request for contract extras.
- 5.2. Bechtle does not require consent for contract extras that Bechtle can demonstrate are reasonably necessary for the performance of the Agreement, or for contract extras that reasonably arise from the Customer's instructions. Such work will be carried out based on subsequent costing at Bechtle's hourly rate as applicable at the time when the work is carried out. Other costs incurred can also be billed.

customer's instructions. Such work will be carried out based on subsequent costing at Bechtle's hourly rate as applicable at the time when the work is carried out. Other costs incurred can also be billed.

#### **Article 6. Third-party products or services**

- 6.1. The Customer authorises Bechtle to place orders in the name of the Customer for third-party Products or Services if this is required for the performance of the Agreement. Unless agreed otherwise, the agreements relating thereto shall apply directly between the Customer and the third party concerned.
- 6.2. Supplementary or divergent terms and conditions may be applicable to the use of the third-party Products or Services. Those terms and conditions are available from Bechtle on request. The Customer accepts those terms and conditions in advance and is aware that the terms and conditions may be amended at any time.
- 6.3. Invoicing of the third-party Products and Services can take place both via Bechtle and directly to the Customer. If the invoicing takes place via Bechtle, the Customer is not permitted to suspend any payment obligation owing to breach of contract by the third party concerned.
- 6.4. Under no circumstances shall Bechtle be liable with regard to Products and Services supplied by third parties.

#### **Article 7. Support**

- 7.1. Bechtle will offer Support when supplying the Service as stated in the Agreement, possibly supplemented by a service level agreement.
- 7.2. Bechtle may impose restrictions on the use of the forms of Support offered. In addition, Bechtle is free to determine and/or modify the availability and response times of the Support, unless agreed otherwise.
- 7.3. Specific and supplementary agreements on (diverging) availability of Support (via telephone) and the response times will, if agreed by the Parties, be laid down in a service level agreement.

- 7.4. Repairs of damaged or lost (Client) data of the Customer (if and insofar as possible) are not covered by the Support referred to in this Article and will be carried out on the basis of subsequent costing at the hourly rates applicable at the time concerned.

#### **Article 8. Maintenance**

- 8.1. Bechtle will only carry out Services regarding Maintenance and repairs for the Customer if this is expressly agreed by the Parties.
- 8.2. If, in connection with Maintenance or repairs, Hardware is (temporarily) not available for the Customer and/or the Hardware is in Bechtle's possession, the Customer will not be entitled to replacement Hardware, unless and insofar as agreed otherwise by the Parties.
- 8.3. Bechtle shall not be responsible and liable for loss of any data stored on the Services resulting from Maintenance or repairs. The Customer is itself responsible for making back-ups and spare copies of the data stored on the Hardware, unless the Parties expressly agree otherwise in writing.
- 8.4. The Customer is responsible at all times for reporting on a timely basis any errors detected in anything Bechtle is required to manage or Maintain for the Customer in connection with the Agreement. Bechtle will make every effort to resolve any errors identified or reported as soon as possible. Any specific (performance) agreements on this can be laid down in a service level agreement to be concluded separately.
- 8.5. The costs for Maintenance do not include the costs incurred by Bechtle in connection with reinstallation, transport of the Hardware, replacement of consumables and Hardware components and work arising from this. Bechtle is authorised to charge these costs separately to the Customer.
- 8.6. If it proves to be necessary for Bechtle to carry out Maintenance or work as a result of or in connection with user errors of the Customer, improper use by the Customer, a failure by the Customer to report malfunctions on a timely basis, external factors and

applications and actions of third parties, Bechtle can charge an additional fee to the Customer.

- 8.7. In the event that the Customer, following the intake and inspection of Equipment by Bechtle, decides not to have a repair carried out, Bechtle will return the Equipment in unrepaired condition. Bechtle is entitled to invoice costs incurred, such as the costs of the return, intake and inspection of Equipment, to the Customer.

#### **Article 9. Confidentiality**

- 9.1. Bechtle and the Customer will treat Confidential Information of the other Party as strictly confidential and use it solely for the performance of the Agreement.
- 9.2. The receiving Party will ensure that the Confidential Information is given the same level of protection against unauthorised access or use as its own confidential information, but at least a reasonable level of protection.
- 9.3. The Parties shall also impose the obligations described in this Article on employees and any third parties that may be engaged to whom or which the Confidential Information is disclosed.
- 9.4. The obligations laid down in this Article shall not apply with regard to information that:
  - a) is or becomes generally accessible to the public for reasons other than disclosure by the receiving Party in violation of the Agreement;
  - b) was already in the possession of the receiving Party before it was disclosed to it by or on behalf of the disclosing Party;
  - c) is provided to the receiving Party on a non-confidential and lawful basis by a source other than the disclosing Party; or
  - d) has been demonstrably developed independently by the receiving Party.
- 9.5. If a Party receives an order from a competent authority to hand over Confidential Information, it shall be entitled to proceed to hand it over. The disclosing Party shall however be informed of the order as soon

as possible (in advance) unless this is prohibited. If the disclosing Party states that it intends to take measures against the order (for instance, by means of preliminary relief proceedings), the receiving Party shall wait before handing over the Confidential Information until a decision has been taken on this, insofar as this is permitted by law.

#### **Article 10. Prices and payments**

- 10.1. All prices stated by Bechtle are in euros and exclude turnover tax and other duties levied by the government, travel and accommodation costs, telecommunication costs and shipping costs, such as costs of couriers, postage costs, and shipping materials.
- 10.2. Bechtle is entitled to pass on to the Customer any change in the factors that affect Bechtle's pricing, including purchase prices, exchange rates, import and export duties, insurance fees, freight fees, other levies or taxes and increases in the price index figure of the Netherlands Bureau for Economic Policy Analysis (CPB).
- 10.3. All prices stated in catalogues and on the website are subject to change.
- 10.4. Bechtle is entitled to invoice electronically and in advance. All invoices must be paid within thirty (30) days of the invoice date.
- 10.5. Bechtle is entitled to increase the prices annually, as of the month of January, by up to five (5) per cent, without the Customer having the option of terminating the Agreement.
- 10.6. Prices can be increased by Bechtle at any time with immediate effect due to changed rates of suppliers for Products or Services that are passed on to the Customer on a pro rata basis, without the Customer having the option of terminating the Agreement.
- 10.7. If Bechtle increases the prices in cases other than those described in this Article, the Customer shall be entitled to terminate the Agreement in writing with effect from and no later than up to the date on which the price increase takes effect.
- 10.8. The Customer is not entitled to offset any of its payment obligations with any amount owed by Bechtle, for whatever reason.
- 10.9. Complaints regarding the amounts of the invoices submitted by Bechtle must be notified in writing within at most 72 hours of the invoice date, which period is the expiry period.
- 10.10. If the Customer fails to pay an invoice within the payment term, the Customer shall be in default by operation of law, without any prior demand for payment or notice of default being required. In such a case, Bechtle shall be entitled to charge the statutory interest rate applicable to commercial transactions on that amount or, if higher, interest of five (5) per cent a month.
- 10.11. If the Customer again fails to pay the amount of the invoice following a demand for payment or notice of default, Bechtle shall be entitled to refer the claim for collection and/or to suspend the supply of Products or Services until the amounts outstanding have been paid in full. In such a case, both the judicial and extrajudicial costs (including the costs of lawyers, legal experts, bailiffs and debt collection agencies) shall be payable by the Customer.
- 10.12. Bechtle shall be entitled at all times, before supplying its Services and/or Products, or continuing to supply them, to demand advance payment or security for the fulfilment of the payment obligations of the Customer that is adequate in its opinion, in the form of a bank guarantee, surety or deposit or in another form, in which connection Bechtle shall be entitled to suspend further deliveries if the Customer fails to comply with this demand, even where a fixed delivery term has been agreed, without prejudice to Bechtle's right to demand compensation due to late performance or non-performance of the Agreement.
- 10.13. If Bechtle has good reasons for fearing that the Customer will fail to comply with its payment or other obligations, Bechtle shall be entitled to repossess the Products delivered subject to retention of title as referred to in Article 20.9 of these General Terms and Conditions. In that connection, the Customer shall provide unrestricted access for Bechtle to its sites and/or buildings to ena-

ble Bechtle to exercise its rights. After repossession, the Customer shall be credited at market value, which value shall in no case be higher than the original purchase price, reduced by the costs relating to the repossession.

#### **Article 11. Advisory services and reports**

- 11.1. Bechtle will endeavour to ensure that all advice, information, data, reports and similar documents supplied in connection with the Agreement are complete and accurate, but is unable to provide any guarantees for this.
- 11.2. Any advice, information, data, reports and similar documents provided are intended solely for the Customer's own use, unless agreed otherwise.
- 11.3. The Customer may not invoke any error or defect in the report or advice, if, following the formation of the Agreement, interim changes have occurred at the Customer and these have affected the advice or report concerned.
- 11.4. The Customer may not invoke any error or defect in the report or advice after the Agreement between the Parties has been terminated.

#### **Article 12. Intellectual Property Rights**

- 12.1. The Intellectual Property Rights to all Software and Materials and any Products and Services that Bechtle supplies, develops or makes available in connection with the Agreement shall be vested in Bechtle or its licensors. The Customer is required to treat the above and the information comprised therein, in particular know-how concerning the performance to be delivered, as Confidential Information and not to make this available to third parties.
- 12.2. The Customer is not entitled to modify the Materials and Products provided by Bechtle in connection with the Agreement.
- 12.3. The Customer is not permitted to remove from the Materials and Products or to modify any designation of Intellectual Property Rights. In addition, it is also not permitted to remove from Materials and Products of

Bechtle any designation concerning their confidential nature.

- 12.4. The Customer shall be responsible for any Materials and Products made available to Bechtle and guarantees that their use by Bechtle will not infringe any third-party rights. The Customer indemnifies Bechtle against any claims of third parties relating to or arising from the aforementioned guarantee.
- 12.5. Bechtle is permitted to use the (trade and brand) name and distinguishing marks of the Customer for promotional purposes.

#### **Article 13. Liability**

- 13.1. Bechtle is only liable in respect of the Customer for direct damage or loss arising from an attributable failure in the performance of this Agreement.
- 13.2. Under no circumstances shall Bechtle be liable to compensate for indirect or consequential damage or loss, such as damage or loss due to lost sales or profit, lost savings, delays or loss of data.
- 13.3. Without prejudice to the provisions above, Bechtle's liability for direct damage or loss per year shall be limited to the amount (excluding VAT) payable by the Customer to Bechtle pursuant to the Agreement during six (6) months preceding the event causing the damage or loss. Under no circumstances will the total compensation for any damage or loss exceed the amount paid out by Bechtle's liability insurance.
- 13.4. Bechtle is not liable for any damage or loss caused by acts or omissions of third parties engaged by the Customer in the performance of the Agreement.
- 13.5. Any limitation of Bechtle's liability included in the Agreement shall lapse if and insofar as the damage or loss is due to intent or wilful recklessness on the part of Bechtle's management. The burden of proof with regard to intent or wilful recklessness shall rest on the Customer.
- 13.6. Bechtle can be held liable for an attributable breach of the Agreement only if the Customer promptly gives Bechtle proper notice of default in writing, stating a rea-

sonable time period in which to remedy the breach, and Bechtle continues to attributable breach its obligations even after that period. The notice of default must describe the non-compliance in the greatest possible detail, so as to enable Bechtle to provide an adequate response.

- 13.7. Any right to claim compensation is at all times subject to the condition that the Customer notify Bechtle of the damage or loss, in writing, within thirty (30) days of the damage or loss being discovered.
- 13.8. In derogation from the paragraph above, the Customer is required to provide written notification to Bechtle in the event of in-transit damage within 72 hours after delivery of the Products and/or Services concerned.
- 13.9. The Customer shall indemnify Bechtle against any third-party claims arising from a breach of the Agreement by the Customer.

#### **Article 14. Force majeure**

- 14.1. Bechtle cannot be obliged to perform any obligation under the Agreement if performance is prevented due to force majeure. Nor can Bechtle be held liable for any loss or damage arising therefrom.
- 14.2. For the present purposes, force majeure, in addition to the explanations in existing (case) law, is understood to mean all external causes, whether or not anticipated, beyond Bechtle's control, as a result of which Bechtle is unable to fulfil its obligations. Force majeure will in any case be understood to include power outages, internet failures, failures in the telecommunications infrastructure, network attacks (including (D)DOS attacks), attacks by malware or other harmful software, internal civil commotion, non-delivery or delays in delivery by suppliers, force majeure affecting suppliers, machinery breakdowns and other interruptions of operations (either at Bechtle or at its suppliers), transport disruptions and other events beyond its control, such as mobilisation, war, blockades, riots, acts of terror, epidemics, pandemics, devaluation, strikes, staff shortages, import and export

barriers, stagnation in supplies, fire, floods, storms, as well as sudden increases in import duties and excise duties and/or taxes, failure to obtain the necessary permits and other government measures.

- 14.3. If Bechtle is prevented by force majeure to carry out the agreed work in full or in part, or if it is unable to supply the Products and Services (on time), it shall be entitled, without any intervention by a court being required, to suspend the performance of the Agreement or to consider the Agreement to have been dissolved in full or in part, at its sole discretion, without being obliged to provide any compensation or guarantee.
- 14.4. To the extent that Bechtle had already partially fulfilled its obligations under the Agreement by the time the force majeure commenced or will be able to partially fulfil them, which partial fulfilment can be ascribed an independent value, Bechtle is entitled to separately invoice such partial fulfilment. The Customer shall be obliged to settle this invoice.

#### **Article 15. Takeover of staff**

- 15.1. The Customer is not permitted to employ Bechtle's employees or to allow such employees to work for the Customer in any other manner, either directly or indirectly, without Bechtle's permission in writing for the term of the Agreement plus three (3) years after the Agreement has ended.
- 15.2. In this connection, Bechtle's employees are understood to be persons employed by Bechtle or by one of its affiliates, or those who were employed by Bechtle or by one of its affiliates no longer than one year before the termination of the Agreement, regardless of the reason for this.
- 15.3. If the Customer fails to comply with the prohibition described above, the Customer shall be required to pay Bechtle a penalty immediately due and payable of €10,000 for each violation and of €1,000 for each day during which the violation continues, without prejudice to Bechtle's right to demand compensation if the damage or loss

actually suffered exceeds the penalty payable by the Customer.

#### **Article 16. Duration and termination**

- 16.1. An Agreement in connection with a clearly defined non-recurring project shall end by operation of law upon completion of that project.
- 16.2. The term of a continuing performance agreement is laid down in the Agreement. If no term is specified in the Agreement, it shall be deemed to have been concluded for an initial period of twelve (12) months.
- 16.3. If the Agreement is a continuing performance agreement, it will be tacitly extended by the same term in each instance.
- 16.4. If the Agreement has been entered into for a fixed period, it can be terminated in writing by either party with effect from the end of the term with due observance of a period of notice of one (1) month.
- 16.5. If the Agreement has been entered into for a fixed period, neither of the Parties shall be permitted to terminate the Agreement early, except for the situations described in this Article.
- 16.6. If the Agreement has been entered into for an indefinite period, it can be terminated in writing by either party at any time with due observance of a period of notice of six (6) months.
- 16.7. The Parties can suspend or terminate the Agreement in writing with immediate effect without any notice of default being required if:
  - a) the other Party files for bankruptcy or this other Party is declared bankrupt;
  - b) the other Party applies for a moratorium or the other Party is granted a moratorium;
  - c) the activities of the other Party are discontinued or the business of the other Party is liquidated; or
  - d) attachment is levied on part of the assets of the other Party.
- 16.8. In the event of termination of the Agreement, any claims of Bechtle on the Customer will become immediately due and payable.

- 16.9. In the event that the Agreement is dissolved, the amounts already invoiced will remain payable by the Customer and no obligation to reverse will be created or arise. The Customer may only dissolve the part of the Agreement that has not yet been fulfilled by Bechtle.

#### **Article 17. Changes**

- 17.1. Bechtle is entitled to modify these General Terms and Conditions in whole or in part at any time. Any changes shall be notified to the Customer by Bechtle at least one (1) month in advance.
- 17.2. If a change in the General Terms and Conditions announced by Bechtle adversely affects the Customer's position, the Customer can lodge an objection to this in writing, stating the reasons, before the change concerned takes effect. In the event of an objection, Bechtle may reconsider the change and decide to revoke it in whole or in part.
- 17.3. If Bechtle decides to implement the change despite the Customer's objection, the Customer shall be entitled to terminate the Agreement in writing with effect from, and no later than up to, the date on which the change will take effect.
- 17.4. If the Customer does not lodge an objection in writing, stating the reasons, to the proposed change within seven (7) days after it is announced by Bechtle, the Customer is deemed to have accepted the change.
- 17.5. Changes of minor significance, changes that are necessary due to amended laws and regulations and changes that benefit the Customer can be implemented by Bechtle without advance notification. The Customer is not entitled to lodge an objection and/or to terminate the Agreement in the case of such changes.

#### **Article 18. Choice of law and forum**

- 18.1. This Agreement and these General Terms and Conditions are governed solely by Dutch law.
- 18.2. Any disputes that may arise from or in connection with the Agreement will be submit-

ted to the competent court in the district in which Bechtle has its registered office.

- 18.3. The applicability of the Vienna Convention on Contracts for the International Sale of Goods is expressly excluded.

#### **Article 19. Miscellaneous provisions**

- 19.1. Neither of the Parties is permitted to transfer its rights and obligations under this Agreement to a third party without the other Party's written consent.
- 19.2. In derogation from the above, Bechtle is entitled to transfer, without consent being required, its rights and obligations pursuant to the Agreement to a parent company, sister company or subsidiary or to a third Party acquiring the Products and Services or the business activities concerned from Bechtle. Bechtle shall inform the Customer as soon as possible if such a transfer has taken place.
- 19.3. Unless expressly agreed otherwise with Bechtle, all Products or Services ordered by the Customer are intended solely for the Customer's own internal use and not for resale. If the Customer wishes on an incidental basis to sell a Service or Product to another party, the Customer is required to request Bechtle's permission for this.
- 19.4. If any provision in the Agreement is found to be void, voidable or otherwise invalid, this shall not affect the validity of the Agreement as a whole. In such case, the Parties will replace that provision by one or more new provisions reflecting the purport of the original provision as far as is possible under the law.
- 19.5. The terms "written"/"in writing" in the Agreement also include communication by e-mail, provided that the sender's identity and integrity of the contents have been sufficiently established, with the exception of notices of default and dissolution or termination of the Agreement.
- 19.6. Bechtle's records and log files shall be regarded as authentic evidence, barring evidence to the contrary provided by the Customer.

- 19.7. Bechtle respects the privacy of its Customers. Bechtle processes and protects personal data in accordance with the legal requirements applying for this and in accordance with its privacy statement.

#### **Section 2. Supply of Products**

*The provisions in this section 'Supply of Products' relate to the supply of Products, including Hardware (via a Webshop or otherwise), and related Services that Bechtle may carry out for the Customer.*

#### **Article 20. Purchase of Products**

- 20.1. The Parties can agree that the Customer will purchase Products from Bechtle. The terms and conditions as described in this Article shall only apply if the Agreement relates to the purchase of Products.
- 20.2. After the formation of the Agreement, Bechtle shall endeavour to supply the Products to the Customer in accordance with the Agreement. The risk of loss, theft or damage of the Products passes to the Customer from the moment when the Products have been placed in transit to the Customer.
- 20.3. In principle, Bechtle will deliver the Products to the address of the Customer's business that is known to Bechtle.
- 20.4. If agreed by the Parties, Products can also be delivered to another address or specific location in a premises of the Customer, or to the address of an End User. Additional costs can be charged for this by Bechtle.
- 20.5. If the Customer rejects Products to be delivered by Bechtle, fails to collect them at an agreed collection time, provides incorrect information about the delivery address and/or the supply of Products is not possible for other reasons attributable to the Customer, Bechtle shall be entitled to store the Products at the Customer's risk. Costs for (external) storage of Products shall be payable by the Customer. If the Products concerned have not been collected by the Customer or delivered to the Customer within three (3) months, Bechtle shall also be entitled to cede or sell the Products to third parties. The above does not affect any

payment obligations of the Customer that remain to be settled and does not entitle the Customer to be credited with any amounts already paid for the Products.

- 20.6. The Customer must inspect the Products supplied for any damage or other defects as soon as possible, but in any case within seven (7) days after delivery. Insofar as there is any damage that is visible on the outside, such as in-transit damage, the Customer must report this to Bechtle within seventy-two (72) hours after delivery. If the Customer identifies any damage or other defects, the Customer must report this to Bechtle without delay and in writing. When reporting any damage or other defects, the Customer must adequately substantiate what these are and send sufficient evidence to Bechtle to enable the latter to assess whether the report is justified.
- 20.7. If the Customer does not report any damage or defects to Bechtle within the term referred to in the preceding paragraph, the Products shall be deemed to have been delivered without any damage or defects.
- 20.8. If Bechtle delivers the Products without packaging material on the Customer's request, the risk for this shall be borne by the Customer and Bechtle shall under no circumstances be liable for in-transit damage.
- 20.9. All Products supplied to the Customer by Bechtle shall remain the property of Bechtle until the Customer has paid the amount due for them in full. The Customer is not entitled to sell or pledge, or otherwise encumber, any items to which the retention of title applies.
- 20.10. All equipment, software and other materials to be used by Bechtle in providing the service shall remain the property of Bechtle, even if the Customer pays a fee for them to be developed by Bechtle.
- 20.11. The Customer is expressly not authorised to have Maintenance or repairs carried out by third parties on Hardware supplied by Bechtle that is (still) the property of Bechtle or to which Bechtle's retention of title (still) applies.

20.12. The Customer shall inform Bechtle without delay if a third party seeks to establish or exercise rights or to levy an attachment, or to have an attachment levied, in respect of the Products to which the retention of title applies as referred to in the preceding paragraph. The Customer hereby grants Bechtle (or third parties designated by Bechtle) unconditional and irrevocable permission to enter, in such a case, all the places where Bechtle's property is located and to repossess it.

### **Article 21. Leasing of Products**

- 21.1. The Parties can agree that the Customer will lease Products from Bechtle. The terms and conditions described in this Article shall only apply if the Agreement relates to leasing Products.
- 21.2. After the formation of the Agreement, Bechtle shall endeavour to make the Products available to the Customer in accordance with the Agreement. The risk of loss, theft or damage of the Products passes to the Customer from the moment when the Products have been placed in transit to the Customer.
- 21.3. Bechtle grants the Customer, for the duration of the Agreement, or if a different lease term has been agreed for the duration of the agreed lease term, the right to use the Products in accordance with the terms and conditions in this section and any supplementary terms and conditions agreed by the Parties.
- 21.4. The Customer will only use the Products for the purposes for which the Products are intended according to their nature and will in this connection carefully follow any instructions provided by Bechtle and/or the manufacturer.
- 21.5. The Customer is not permitted, without the prior express and written permission of Bechtle, to transfer, sub-lease, pledge or otherwise encumber the Products.
- 21.6. The Products shall be deemed to have been delivered undamaged, unless the Customer notifies Bechtle no later than within seven (7) working days after delivery in writing,

providing adequate substantiation, that the Products were already damaged before delivery. A complaints response period of up to 72 hours after delivery of the Products shall apply for defects visible on the outside.

- 21.7. Insofar as permitted by law, the Parties agree that Sections 7:203 up to and including 7:211 of the Dutch Civil Code shall be excluded.
- 21.8. Solely Bechtle is entitled to manage the Products and to carry out Maintenance or any other form of upkeep or modification of the Products.
- 21.9. If the Customer implements any changes in the Products without the prior express permission of Bechtle, the Customer shall be obliged to compensate for the costs incurred by Bechtle for the purpose of remedying errors, problems or otherwise.
- 21.10. The Customer is required to keep the Products adequately insured (for its own account) during the term of the Agreement against fire, damage caused by water and theft and other risks. The Customer shall provide evidence of this to Bechtle immediately on the latter's request.
- 21.11. Any loss, theft or damage of the Products shall not affect the agreed payment obligations of the Customer. Any costs for repair or replacement of the Products shall be payable by the Customer.
- 21.12. In the event of loss, theft or damage of the Products the Customer shall be obliged to notify Bechtle of this immediately in writing. Bechtle shall endeavour in such a case to repair or replace the Products, or to have them repaired or replaced, at the Customer's expense within a reasonable period. Bechtle shall also be entitled to recover from the Customer any damage or loss and costs resulting from the loss, theft or damage.
- 21.13. If a third party seeks to levy an attachment on the Products, or to have an attachment levied on them, to establish rights in respect of the Products or to convert rights in respect of the Products into cash, the Customer shall notify Bechtle of this in writing

without delay. In that connection, the Customer hereby irrevocably grants Bechtle permission to enter, in such a case, all the places where the Products are located and to repossess them.

## **Article 22. Hardware installation and configuration**

- 22.1. The Customer is itself responsible for installing and configuring Hardware supplied by Bechtle after delivery, unless the Parties agree that Bechtle will install and/or configure it. In that connection, the Customer is required to adhere strictly to all instructions given by Bechtle and any instructions or documentation provided with the Hardware.
- 22.2. If this has been agreed, Bechtle will install and/or configure the Hardware in a location and manner determined in the Agreement. Bechtle is entitled to refuse the installation and/or configuration of Hardware in a specific location if in its professional opinion the location is not possible, or the proper operation of the Hardware cannot be guaranteed at the location concerned.
- 22.3. Bechtle is entitled to engage third parties for the installation and/or configuration of the Hardware as referred to in the preceding paragraph.
- 22.4. The Customer shall provide access for Bechtle or the third parties engaged by Bechtle to the designated location and provide the necessary cooperation for the installation and/or configuration of the Hardware.
- 22.5. The Customer itself shall remain responsible for the correct power supply and network connections. If the aforesaid facilities and other facilities that can be reasonably considered to be necessary are not available, Bechtle may be unable to carry out a correct and complete installation and/or configuration.
- 22.6. If the parties agree results, deadlines or terms and Bechtle depends, for the correct fulfilment thereof, in full or in part on the cooperation of or the fulfilment by the Customer of certain agreed conditions, Bechtle

shall under no circumstances be liable for a failure to achieve those results, deadlines or terms if this is in full or in part a consequence of a failure on the part of the Customer to provide its cooperation or to fulfil the agreed conditions.

#### **Article 23. Warranties applicable to Hardware**

- 23.1. The Customer accepts that the Hardware possesses only the functionality and other features in the condition in which the Customer finds them at the time of delivery. Solely the warranty provided by the manufacturer shall be applicable to the Hardware supplied by Bechtle, unless supplementary warranties are expressly provided in the Agreement. Information on the manufacturer's warranty is available from Bechtle upon request.
- 23.2. If the Parties agree on specific warranties, these shall not be applicable to damage or defects (1) that are the result of improper use, (2) that are not connected with any faultiness of the materials used and/or the manufacturing, (3) that have been caused as a result of incorrect storage or keeping of the Hardware, or (4) that are the result of climatological or other influences.

#### **Article 24. Returns**

- 24.1. Returning purchased products is solely possible following the prior written permission of Bechtle. Permission given by Bechtle for returns shall under no circumstances imply any acknowledgement of liability.
- 24.2. Leased Hardware shall be collected as soon as possible by Bechtle if the Agreement expires or is terminated.
- 24.3. The Customer is obliged to return Hardware to Bechtle in undamaged condition, except for normal wear and tear of the Hardware. If Bechtle ascertains that the Customer has made changes to the Hardware without the written permission of Bechtle, or the Hardware is damaged, any costs for repair or replacement shall be borne by the Customer.
- 24.4. Any costs connected with returns shall be borne by the Customer.

### **Section 3. Supply of Software**

*The provisions of this Section 'Supply of Software' relate to the supply of Software and related Services to the Customer by Bechtle.*

#### **Article 25. Licence**

- 25.1. If certain Software is delivered to the Customer by Bechtle pursuant to the Agreement, the Customer shall solely be granted the non-exclusive, non-transferable and non-sublicensable rights of use that arise from the Agreement or that have otherwise been granted in writing by Bechtle.
- 25.2. If a software licence is sold or delivered to the Customer by Bechtle, the Customer shall be obliged, unless agreed otherwise in writing, to conclude this licence agreement directly with the licensor. Bechtle shall under no circumstances become a party to such a licence agreement. The Customer shall indemnify Bechtle against all damage that may possibly arise from the non-compliance by the Customer with such a licence agreement.
- 25.3. Unless agreed otherwise, the right of use for Software shall apply solely for the duration of the Agreement and the right of use solely concerns the use of the Software by one person on one device.
- 25.4. Costs for any updates and upgrades of the Software are not included in the Agreement, unless providing them is expressly part of the agreed Services.
- 25.5. The Customer is not entitled to modify the Software provided by Bechtle in connection with the Agreement.
- 25.6. The Customer is not entitled to a copy of the source code of the Software and it is expressly not permitted to obtain this by means of reverse engineering, decompilation or similar techniques, except insofar as provided otherwise by mandatory law.
- 25.7. Bechtle (or its supplier) can take technical and other measures to protect the Software provided. Where Bechtle (or its supplier) has implemented such security measures, the Customer may not circumvent or remove that security.

#### **Article 26. Implementation and installation of Software**

- 26.1. If the Parties have agreed that the Software must be implemented or installed by Bechtle, Bechtle shall carry this out in accordance with what is provided on this in the Agreement.
- 26.2. In connection with the implementation or installation of the Software, the Customer shall provide every required cooperation and follow the reasonable requests of Bechtle. Following implementation and/or installation, Bechtle will deliver the Software at the Customer.
- 26.3. If the parties agree results, deadlines or terms and Bechtle depends, for the correct fulfilment thereof, in full or in part on the cooperation of or the fulfilment by the Customer of certain agreed conditions, Bechtle shall under no circumstances be liable for a failure to achieve those results, deadlines or terms if this is in full or in part a consequence of a failure on the part of the Customer to provide its cooperation or to fulfil the agreed conditions.

#### **Article 27. Warranties applicable to Software**

- 27.1. The Customer accepts that the Software contains only the functionality and other features in the condition in which the Customer finds them at the time of completion/delivery ('as is'), hence with all visible and invisible errors and defects.
- 27.2. The Customer is required itself to check the calculations or processing of Client Data carried out by means of the Software. Bechtle does not guarantee that all calculations and/or processing will be free of error at all times.

#### **Section 4. Hosting and cloud services**

*The provisions in this section 'Hosting and cloud services' relate to the Services in the field of hosting and cloud services, which may also include hosting of Webshops, that Bechtle may carry out for the Customer.*

#### **Article 28. Access to the Service**

- 28.1. An Account may be required to facilitate access for the Customer to the Services. If required under the Agreement, Bechtle can create an Account for or on behalf of the Customer (and if necessary, End Users) and provide login details (user name and password).
- 28.2. All login details of the Customer (and its End Users) are strictly personal and must not be shared with any other person. These login details must be treated as Confidential Information.
- 28.3. Bechtle may assume that all the activities carried out through the Accounts for which it has provided login details to the Customer take place under the supervision and control of the Customer.
- 28.4. If login details of an Account have been lost or leaked, the Customer will immediately take all measures that are reasonably required and desirable to prevent abuse of the Account. The Customer shall also immediately notify Bechtle, to enable possible additional measures to be taken to prevent abuse of the Account and/or the Services.
- 28.5. If the Service is linked by means of an API link (Application Programming Interface) to the Customer's own system, Bechtle will provide an API key to the Customer. The Customer itself is responsible for the implementation of the API link, unless the Parties agree otherwise. In addition, the Customer must only use the API key for the use of the API by the Customer. Third parties are not permitted to use the API key without permission in writing from Bechtle. Bechtle can provide a new API key to the Customer following changes in the Services or Maintenance.

#### **Article 29. Rules of use**

- 29.1. The Customer guarantees that the Services will not be used by it or its End Users for activities that violate any applicable laws and regulations. Moreover, it is expressly prohibited (regardless of whether this is or is not lawful) to offer, upload or distribute any Materials via the Services that:

- a) incorporate malicious content (e.g. malware or other damaging software);
  - b) infringe on the rights of third parties (e.g. Intellectual Property Rights), or are manifestly defamatory, libellous, offensive, discriminatory or inflammatory;
  - c) violate the privacy of third parties, in any case including but not limited to the distribution of the personal data of third parties without a basis; or
  - d) contain hyperlinks, torrents or links to (the location of) Materials that infringe copyrights or other Intellectual Property Rights; or
  - e) contain child pornography, bestiality pornography or animations thereof or obviously aim to assist others in locating such Materials.
- 29.2. The Customer will refrain from hindering other clients of Bechtle or inflicting damage on the systems or networks of Bechtle or others. It is prohibited to launch processes or programs of which the Customer knows or should reasonably suspect that these will hinder or inflict damage on Bechtle or others.
- 29.3. If, in the opinion of Bechtle, the operation of the systems or networks of Bechtle or of third parties is obstructed, damaged or otherwise put at risk, Bechtle is authorised to take all reasonable measures it deems necessary to avert or prevent such risk.
- 29.4. Bechtle is entitled to pass on to the Customer the costs reasonably entailed by the measures referred to in the preceding paragraph if the danger is caused by or specifically directed at the systems of the Customer.

### **Article 30. Notice-and-take-down**

30.1. If Bechtle ascertains or is notified by a third party that the Services are being used by the Customer to store or distribute unlawful Materials, or the Services are being used to otherwise act unlawfully or in breach of the Agreement, Bechtle may block access to the Materials and/or Services concerned, or

remove the Materials concerned, without being required to make a back-up. Bechtle will endeavour to prevent this from affecting other Materials and will inform the Customer as soon as possible of the measures taken.

- 30.2. Bechtle is entitled to disclose the name, the address and other identifying data of the Customer and/or End Users to a third party that has complained that the Customer and/or the End User concerned are infringing its rights, provided the requirements applicable for this that arise from the law and case law have been complied with.
- 30.3. Bechtle will use its best endeavours to act prudently and as appropriately as possible following complaints about the Customer and/or End Users but cannot be held liable for any damage or loss ensuing from measures that are taken in accordance with this Article.

### **Article 31. User limits**

- 31.1. Bechtle can impose limits on the capacity (such as the volume of data traffic, data storage, power, computing power, etc.) that the Customer is permitted or actually able to use via the Service. If the Parties have not agreed anything on this, a limit based on fair use shall apply.
- 31.2. Fair use applies if the Customer uses at most twice as much capacity as that used by other customers of Bechtle in a comparable situation.
- 31.3. If Bechtle ascertains that the Customer exceeds the fair use policy described in this Article or the agreed user limits, Bechtle shall be entitled to charge reasonable costs for this or, following a prior warning to the Customer, to limit access to or the use of the Service.
- 31.4. Bechtle accepts no liability in the event that the Services do not operate correctly if Bechtle ascertains that the Customer is not complying with the fair use policy or the agreed user limits.

### **Article 32. Availability and back-ups**

- 32.1. Bechtle will endeavour to realise uninterrupted availability of the Services but only offers guarantees in this respect if this has been agreed in a supplementary service level agreement.
- 32.2. Only to the extent it is agreed in the Agreement or any service level agreement will Bechtle regularly make back-up files of the Client Data stored by the Customer on Bechtle' systems and make these back-ups available to the Customer at the Customer's request at a charge.

### **Article 33. Maintenance**

- 33.1. Bechtle will carry out Maintenance on the Services.
- 33.2. Carrying out Maintenance may entail that the Services concerned can temporarily not be used or only be used to a limited extent. If Bechtle foresees that any specific Maintenance will result in full or partial non-availability, Bechtle shall endeavour to carry out the work at times when the use of the Services is limited.
- 33.3. Where possible, Bechtle shall endeavour to notify the Customer of planned Maintenance in advance.
- 33.4. Bechtle is not obliged to provide Maintenance, Support or assistance with regard to old versions of programs for which an update has already been rolled out.
- 33.5. If the Customer reports a malfunction or defect to Bechtle, this will only be accepted for processing if the defect is demonstrable and reproducible.
- 33.6. Bechtle may modify the functionality of the Service from time to time. While Bechtle welcomes any feedback and suggestions from the Customer, Bechtle has the right not to carry out any modifications if it has reasonable grounds for doing so. Bechtle aims to, but is not obliged to, announce at least two (2) working days in advance that updates will be carried out. The Customer will not be entitled to an announced update that was not carried out due circumstances.

### **Article 34. Client Data**

- 34.1. All rights concerning Client Data, including any Intellectual Property Rights, are vested in the Customer. Bechtle will be granted the right of use to use the Client Data insofar as this is necessary for the performance of the Agreement.
- 34.2. After the Agreement has ended, Bechtle may, provided the Customer has complied with its payment obligations in full, provide a copy of the Client Data in a file format that is customary for this, on the Customer's request. The Customer is required to submit a request for this to Bechtle before the date on which the Agreement expires. If no such request is made, or if Bechtle has provided the requested copy, Bechtle shall be entitled to delete all Client Data (including any back-ups thereof). Bechtle is entitled to pass on all reasonable costs incurred in providing such a copy to the Customer.

### **Section 5. Recycling Services**

*The provisions in this section 'Recycling Services' are applicable if Bechtle carries out Services in the field of reselling, recycling and disposal of Hardware and destruction of data for the Customer.*

### **Article 35. Buying up, recycling and destruction**

- 35.1. Bechtle will inventory and inspect the Hardware after the formation of the Agreement. Based on the inspection, Bechtle will categorise the Hardware on the basis of its suitability for i.) buying up and reselling, ii.) recycling/destruction, and iii.) reuse.
- 35.2. If the Hardware, at Bechtle's discretion, is eligible for buying up and reselling by Bechtle, Bechtle can make an offer to the Customer for a one-time payment to acquire the Hardware from the Customer, or agree a percentage of the selling price with the Customer to which the Customer will be entitled when Bechtle sells the Hardware.

### **Article 36. Disposal of Hardware**

- 36.1. Bechtle will collect the Hardware that is to be disposed of from the Customer, or may request the Customer to deliver the Hard-

ware, for its own account and risk, to an address designated by it. The Hardware will become the property of Bechtle at the moment of physical transfer of the Hardware from the Customer to Bechtle.

- 36.2. The Customer is not permitted to place Products which, in view of their nature, are not suitable to be used or cannot be used outside of the business of the Customer, outside the business of the Customer or arrange for them to be placed there.
- 36.3. The Customer shall guarantee that the Hardware contains no hazardous waste materials, such as chemical waste, toxic, caustic, explosive or radioactive substances, nor other substances that may harm people or the environment.
- 36.4. If Bechtle decides (on site) that the Hardware and/or certain substances or materials are not suitable for disposal by Bechtle or are offered by the Customer in violation of the preceding paragraph, Bechtle shall be entitled at all times to refuse the Hardware, substances or materials.
- 36.5. Bechtle will only dispose of packaging materials of the Customer if the Parties have expressly agreed this.

### **Article 37. Data on the Hardware**

- 37.1. Insofar as not agreed otherwise between the Parties, the Customer itself shall be responsible for making any required back-ups and copies of data stored on the Hardware. Bechtle shall not be liable for the removal of data stored on the Hardware that is disposed of.
- 37.2. Unless the Parties agree otherwise, Bechtle shall not be liable for loss of data stored on Hardware that is disposed of and the Customer is itself responsible for removing data stored on Hardware before it is provided to Bechtle.