

# ICT~Office Terms and Conditions

## Module 13 Maintenance of ICT, telecommunication and office equipment

*The ICT~Office Terms and Conditions are filed with the Chamber of Commerce for the Central Netherlands under number 30174840.*

### **1. Applicability**

- 1.1 The ICT~Office Terms and Conditions consist of the General module as well as one or more specific modules per product or service. The provisions of this module shall apply in addition to the provisions of the General module in the event that the Supplier provides services in relation to the maintenance of ICT, telecommunication and office equipment (hereinafter referred to as: the equipment).
- 1.2 The provisions of this module are inextricably linked with the provisions of the General module. In the case of conflict between the provisions of the General module and the provisions of this module, the latter shall prevail.

### **2. Services**

- 2.1 The Supplier shall carry out maintenance work on the equipment referred to in the agreement. The maintenance work carried out by the Supplier shall not affect the Client's responsibility for management, including monitoring settings, the use of the equipment and the manner in which the equipment is used. The Client shall also be responsible for training given to and use by users, regardless of whether or not there is a relationship of authority between the Client and these users.
- 2.2 The Supplier shall not accept any obligation to carry out maintenance work on equipment that has not been set up in the Netherlands, except where agreed otherwise in writing.
- 2.3 During the time that the Supplier has the equipment to be maintained in its custody, the Client shall not be entitled to temporary replacement equipment.

### **3. Provision of services**

- 3.1 The Supplier shall make every effort to ensure that the services are provided with due care and in accordance with the arrangements and procedures agreed in writing with the Client, where applicable. The Supplier shall provide all maintenance services on the basis of a best efforts obligation, unless and in so far as the Supplier has explicitly undertaken in the written agreement to achieve a specific result and the result in question is sufficiently determined.

- 3.2 The content and scope of the maintenance services to be carried out by the Supplier and any corresponding service levels shall be set out in a written agreement between the parties. If no agreements have been reached in this regard, the Supplier shall be obliged to make every effort to rectify breakdowns of which the Supplier is duly notified by the Client within a reasonable period of time. Within the context of this module, the term 'breakdown' shall be understood to refer to failure to meet the specifications of the equipment explicitly made known by the Supplier in writing, or failure to meet these specifications without interruption. A breakdown shall only be deemed to exist if the Client is able to demonstrate the breakdown and if it is reproducible. Except where agreed otherwise, the Supplier shall also be entitled, however not obliged, to carry out preventive maintenance.
- 3.3 The Client shall, immediately following the occurrence of a breakdown of the equipment, notify the Supplier by means of a detailed description of the breakdown drawn up by an employee who has expert knowledge in this area.
- 3.4 The Client shall lend any cooperation required by the Supplier for the purpose of the maintenance work, including the temporary suspension of use of the equipment. The Client shall be obliged to grant employees of the Supplier or of third parties designated by the Supplier access to the location of the equipment, to lend all other cooperation necessary and to make the equipment available to the Supplier for the purpose of carrying out the maintenance work. If the Client fails to lend the cooperation requested, the Supplier may suspend or limit the maintenance work. If the Supplier is providing maintenance services on the basis of information to be submitted by the Client, this information shall be prepared by the Client in accordance with the conditions to be imposed by the Supplier and provided at the risk and expense of the Client.
- 3.5 Before making the equipment available to the Supplier for maintenance, the Client shall ensure that a full and properly functioning backup copy is made of all software and data installed or stored in or on the equipment. Any

- liability on the part of the Supplier for the scrambling or loss of data or software as a result of the maintenance work or due to failure to advise the Client to make a backup copy shall be excluded.
- 3.6 At the request of the Supplier, an employee of the Client who has expert knowledge in this area shall be available for consultation during the maintenance work. The Client shall be entitled to remain present during all activities carried out on the Client's behalf.
- 3.7 The Client shall be authorised to connect equipment and systems not provided by the Supplier to the equipment sold to the Client, and to install software that has not been provided by the Supplier on this equipment. The costs associated with investigating and rectifying breakdowns arising from the connection of equipment not provided by the Supplier or the installation of software not provided by the Supplier shall be borne by the Client.
- 3.8 If the Supplier deems it to be necessary to test the connections between the equipment and other equipment or software for the purpose of carrying out maintenance work on the equipment, the Client shall make the other equipment and software in question, as well as the test procedures and data carriers, available to the Supplier. The Client shall guarantee that it is entitled to make this equipment and software available, and shall indemnify the Supplier against any claims by third parties in relation to the provision of this equipment and software and use by the Supplier of the equipment and/or software made available within the context of the maintenance work.
- 3.9 The Client shall provide any test material required for the purpose of carrying out the maintenance work that does not form part of the Supplier's standard facilities.
- 3.10 The Client shall provide the technical, physical and telecommunication facilities required in order to operate the equipment. The maintenance work shall explicitly not include the aforementioned facilities and connections.
- 3.11 If the agreement stipulates that the service provided by the Supplier shall also include the provision of so-called 'standby services', the Supplier shall ensure that one or more members of staff are available during the days and times specified in the agreement. If this is the case, the Client shall be entitled to request urgent or immediate support from the members of staff on standby in the event of a serious breakdown in the operation of the equipment. The Supplier shall not guarantee that all breakdowns will be rectified should this situation arise.

#### **4. Service Level Agreement**

- 4.1 Any service level agreements shall in all cases only be entered into explicitly in writing. The Client shall notify the Supplier at all times of all circumstances that may affect the service and the availability of the service. If service level agreements are entered into, any periods of decommissioning announced in advance due to maintenance work or to circumstances outside of the Supplier's sphere of influence will not be taken into account when assessing availability. The assessment will be based on the service as a whole during the term of the agreement. Barring proof to the contrary, the availability measured by the Supplier shall be conclusive evidence.

#### **5. Term**

- 5.1 The agreement shall be entered into for the term agreed between the parties. If no term has been agreed, a term of one year shall apply. The term of the agreement shall be extended automatically by the term of the original period each time, unless the Client or the Supplier terminates the agreement in writing with due observance of a notice period of three months prior to the end of the period in question.

#### **6. Maintenance fee and payment**

- 6.1 Except where agreed otherwise, the maintenance fee shall not include:
- the costs of (replacing) consumer items such as batteries, stamps, ink (cartridges), toner products, cables and accessories
  - the costs of (replacing) parts as well as maintenance services for the purpose of rectifying breakdowns that are partly or entirely the result of attempts to repair the equipment by anyone other than the Supplier
  - work in relation to the full or partial overhaul of the equipment
  - modifications to the equipment
  - the movement, relocation or reinstallation of equipment or activities as a result of this.
- 6.2 If an invoicing schedule has not been explicitly agreed, all amounts relating to the maintenance of equipment shall in each case be payable in arrears each calendar month. The Supplier may demand that an advance payment be made.
- 6.3 Except where agreed otherwise, maintenance fees shall be due as of the date on which the agreement governing the maintenance of the equipment in question commences. The maintenance fee shall be due regardless of whether the Client is using or has put the equipment into use, or whether it has taken advantage of the option to have maintenance work carried out.



## **7. Exclusions**

- 7.1 Activities in relation to the investigation or rectification of breakdowns resulting from or in connection with operational errors, improper use of the equipment or external causes, such as faults in communication lines, network connections or the electricity supply, or connections to hardware, software or materials that do not fall within the scope of the maintenance agreement, shall not form part of the Supplier's obligations pursuant to this maintenance agreement.
- 7.2 The Supplier's maintenance obligations shall also not include the investigation or rectification of breakdowns resulting from or in connection with any modifications to the equipment that have not been made by or on behalf of the Supplier, use of the equipment contrary to the applicable conditions and failure by the Client to arrange for maintenance work to be carried out on the equipment in a timely manner.
- 7.3 Except where agreed otherwise, the Supplier's maintenance obligations shall also not include the investigation or rectification of breakdowns resulting from or in connection with software installed on the equipment.
- 7.4 If the Supplier carries out investigations and/or maintenance work in relation to the provisions of Article 7.1, 7.2 and 7.3, the Supplier shall be entitled to invoice the costs of this maintenance work in accordance with its standard rates. This shall not affect the other fees payable by the Client in respect of maintenance work.
- 7.5 The Supplier shall under no circumstances be obliged to recover data that has been scrambled or lost as a result of breakdowns and/or maintenance work.

## **8. Miscellaneous**

- 8.1 The Supplier shall not guarantee that the equipment to be maintained will operate with no interruptions or other defects or that all defects will be rectified.
- 8.2 The Client shall bear the risk of loss or theft of, or damage to, the equipment during the period that the Supplier has the equipment in its custody for the purpose of carrying out maintenance work. The Client shall be responsible for arranging insurance cover in respect of this risk.

