

## Terms and Conditions

**ViriCiti B.V.**  
**July 2015**

### **ViriCiti B.V.**

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### **1 Definitions**

The terms used in these Terms and Conditions are defined as follows:

User: ViriCiti B.V.  
Buyer: User's counter party to the Agreement  
Agreement: The agreement between User and Buyer.  
Product: The ViriCiti Product as outlined in the Agreement.  
Terms and Conditions: The ViriCiti Terms and Conditions as set out below.

### **2 Scope of Application**

- 2.1 These Terms and Conditions are applicable to all legal relationships between User and Buyer, irrespective whether such relationship came to be with the assistance of a third party, including all offers, quotations and agreements between User and Buyer to which the User has declared these Terms and Conditions applicable, insofar as these Terms and Conditions have not been expressly departed from in writing by Parties.
- 2.2 The applicability of any of Buyer's terms and conditions is expressly rejected.
- 2.3 If one or more of the provisions of these Terms and Conditions are invalid or set aside, the remaining provisions of the Terms and Conditions shall remain applicable in full. User and Buyer will use its best effort to replace the invalid provisions with new provisions, which are as closely related to the former provisions with regard to their purpose and tenor.
- 2.4 If there is any uncertainty regarding the interpretation of one or more provisions of these Terms and Conditions, then Parties will attempt to explain the provision with regard to the tone and overall intention of these Terms and Conditions.
- 2.5 If an issue arises between Parties that is not covered by these Terms and Conditions, Parties will attempt to resolve the issue with regard to the tone and overall intention of these Terms and Conditions.

### **3 Offers and conclusion of the Agreement**

- 3.1 All offers made by User are valid for 60 days after issue unless a different period for acceptance has been expressly agreed to in or in relation to the quotation. An offer expires if the product or service which the offer relates to is no longer available, without User being liable for any damages or losses incurred in respect hereof.
- 3.2 User is not liable for any damages or losses or responsible for his quotations or offers if Buyer should reasonably understand that the quotations or offers, or any part thereof, contains an obvious mistake or error.
- 3.3 Offers are based solely on information provided by Buyer for that purpose. Buyer guarantees the accuracy and completeness of the provided information.
- 3.4 In the absence of an agreement to the contrary, the prices stated in the aforementioned offers/quotations are exclusive of VAT and other governmental levies. Costs incurred in relation to the Agreement, including forwarding, administration, travel and accommodation expenses are also not included in the prices stated in the aforementioned offers/quotations.
- 3.5 User is entitled to adjust or increase its prices at any given time, at least but not limited to a yearly increase as a result of inflation or an increase as a result of any requirement by law, an increase of the price of raw materials used for the production of the Product or in any other event that could not have been foreseen at the conclusion of the Agreement. Any price increase by User on the basis of this article will not be deemed grounds for termination of the Agreement by Buyer.
- 3.6 Discounts can only be agreed upon in writing by Parties.
- 3.7 A compound quotation shall not oblige User to execute part of the assignment against a corresponding part of the given price.
- 3.8 If the acceptance by Buyer deviates from the offer included in the quotation or any other offer then User shall not be bound by it and the acceptance by Buyer shall be deemed to constitute a counter offer.
- 3.9 Offers and tenders issued by User do not serve as any indication to or automatically apply to any future order by Buyer or offer by User.

#### 4 Contract duration, delivery, execution and modification of the agreement

- 4.1 The Agreement between User and Buyer is concluded for an indefinite period, unless the nature of the Agreement dictates otherwise or if the Parties expressly agree otherwise in writing.
- 4.2 All deadlines indicated by User are indicative and are not to be regarded as firm deadlines. When User exceeds a deadline Buyer cannot terminate the Agreement with immediate effect, but is obligated to send a notice of default to User and to provide User with a reasonable term to perform under the Agreement.
- 4.3 Buyer is obligated to accept the Products at the time they are delivered by User or the time User has the Products delivered to Buyer or when the Products are made available to Buyer in accordance with the Agreement. If Buyer refuses to accept the Products on delivery or fails to provide information or instructions necessary to the delivery of the Products, User shall be entitled to store Buyer's Products at Buyer's expense and risk.
- 4.4 If and in so far as required for the correct execution of the Agreement, User reserves the right to have its obligations under the Agreement carried out by a third party.
- 4.5 User is entitled to execute the Agreement in several phases and to invoice the amounts payable by Buyer accordingly.
- 4.6 If the Agreement is being executed in phases, User shall be entitled to suspend its obligations under any phase for as long as Buyer has not supplied User with its approval of the results of the prior phase in writing.
- 4.7 User shall execute the Agreement to the best of its ability and in accordance with the requirements of good workmanship ("*vakmanschap*").
- 4.8 Buyer shall ensure that User is provided with all necessary information as indicated by User, which is necessary for the execution of the Agreement. If the information required for the execution of the Agreement is not provided to User on time, as specified by User in its request to Buyer, User reserves the right to suspend execution of the Agreement and/or to charge Buyer with any extra costs at the current market rates incurred as a result of the delay of the provision of the required information by Buyer.
- 4.9 If Buyer wishes to adjust or add services on to the existing Agreement resulting in additional work for User or the executing third party assigned by User the costs relating to this additional work shall be separately invoiced to Buyer and the additional work shall not be covered by any possible price agreement concluded between Parties, unless expressly agreed upon in writing by User before any of the addition work is performed.
- 4.10 If User believes that there is additional work needed under the Agreement he will notify the Buyer as soon as possible and inform Buyer of the impact on the price under the Agreement and the corresponding time span for the execution of the Agreement including the additional work. The associated costs may lawfully be passed on to the Buyer as stated under article 4.9. User shall in no event be held to perform or agree to perform additional work for Buyer.
- 4.11 Changes by Buyer to work planned and agreed upon between Parties should be communicated at least 14 days before implementation to User.
- 4.12 The way of and time span for installation of the Product is based on the information provided by the Buyer under article 3.3. Any additions or changes requested hereto by Buyer or any third parties will be deemed to be additional work as a result of which articles 4.9 till 4.11 will be applicable.
- 4.13 If Buyer is responsible for the delivery of certain materials and/or implementation of certain part of the work under the Agreement, Buyer will be liable for late delivery or late implementation and hereby indemnifies User for any damages or loss claimed by Buyer or any third party in relation hereto.
- 4.14 If the start or the progress of the work under the Agreement is delayed by factors that should be attributed to Buyer, the damages, losses and costs incurred by User in connection hereto will be paid in full by Buyer to User.
- 4.15 Costs relating to delivery or picking up of any Products under the Agreement by User will be charged to and paid by Buyer within a reasonable period of time, being no later than 30 days after which User has provided Buyer with a specified invoice in relation hereto.
- 4.16 If during the execution of the Agreement it becomes clear to Parties that for a proper implementation of the Agreement it is necessary to modify the terms of the Agreement, then Parties shall use their best efforts to discuss in time how the Agreement should be modified as to enable the envisioned execution of the Agreement in such a way that is satisfying for both Parties. As a result of the modifications made to the Agreement, the originally agreed upon quote or implementation period can be amended. User will use its best effort to provide a new estimate of the quote an/or implementation period. Buyer hereby accepts the possibility of amendments made to the price and/or implementation period as a result of the modification of the Agreement.
- 4.17 Any delay in the execution of the amended or modified Agreement will not be held to be a breach of any of the terms of the Agreement and can therefore not be grounds for termination of the Agreement. Without being in default, User is entitled to refuse any request to amend or modify the Agreement if such amendment or modification results in a qualitatively and/or quantitatively change of the Agreement.

## 5 Suspension and termination of the Agreement

- 5.1 Either Party is entitled to suspend or terminate the Agreement with immediate effect and without incurring any liability for damages and/or compensation either direct or indirect and without prejudice to the remaining rights of that party, including the right to claim compensation for damages if:
- the other party neglects to fulfill its obligations under the Agreement in full or in time;
  - that party has good grounds to establish that the other party will not be able to fulfill, in full or in time, its obligations under the Agreement;
  - the other party is declared bankrupt or a request for its bankruptcy is filed with the courts, regardless of the party filing for bankruptcy;
  - the other party proposes or enters into a composition or other arrangement for the benefit of its creditors or class of creditors;
  - a trustee or receiver is appointed by a court for all or a substantial portion of the assets of the other party;
  - the other party becomes insolvent or suspends or dissolves its business.
- 5.2 User may terminate the Agreement with immediate effect without incurring any liability if Buyer neglects to provide a sufficient bank guarantee if Buyer was obligated to provide such bank guarantee under the Agreement;
- 5.3 User is entitled to terminate the Agreement with 30 days prior written notice if circumstances arise which make fulfillment of the obligations under the Agreement impossible or if circumstances occur that are of such a nature that continuation of the Agreement cannot reasonably be expected of User, without incurring any liability.
- 5.4 If the Agreement is terminated, all outstanding amounts owed by Buyer to User are immediately due and payable.
- 5.5 User will not be liable for any damages or compensation to Buyer if the Agreement is terminated in accordance with the provisions laid down in the Agreement or these Terms and Conditions.
- 5.6 If the Agreement is terminated by any of the reasons stipulated in article 5.1, User shall be entitled to receive compensation for damages, including both direct and indirect damages incurred by User in connection with the termination of the Agreement.
- 5.7 Upon termination of the Agreement, regardless of the reason therefore, User shall, in consultation with Buyer, arrange for the transfer of the Product back to User. Costs of such transport will be borne by Buyer.
- 5.8 In the event that an agreement is concluded between User and Buyer and Buyer wishes to cancel the Agreement within 7 days of the conclusion of the Agreement, Buyer shall pay to User (i) 35% of the contract price (including VAT) and (ii) any other costs already incurred by User in connection with the carrying out of the Agreement, including but not limited to labor costs.
- 5.9 Either party is entitled to terminate the Agreement, for any reason, without incurring any liability, except for any outstanding undisputed financial obligations, by giving the other party 2 months prior written notice.

## 6 Force majeure

- 6.1 Neither Party will be deemed to be in default of its obligations under the Agreement if such default is caused by force majeure.
- 6.2 Under these Terms and Conditions, force majeure is defined - in addition to that which is deemed as such by law and legal precedent - as all circumstances, foreseen or unforeseen, that are beyond the control of User/Buyer but which prevent User/Buyer from meeting its obligations under the Agreement. Force majeure will include, but is not limited to earthquakes, fire, epidemics, war, terrorist attacks, sabotage, economic adversity and strikes.
- 6.3 Either party may, during the period that force majeure exists, suspend its obligations under the Agreement. If the period of force majeure is longer than two months, each of the Parties is entitled to terminate the Agreement, without any liability and/or the obligation to pay damages or loss.

## 7, Payment

- 7.1 Invoices are payable within 14 days of the invoice date in a manner indicated by User and in the currency stated on the invoice, without deduction, discount or set-off being permitted, unless otherwise specified by User. User is entitled to invoice periodically.
- 7.2 50% of the initial costs and the hardware costs as stated in the offer will be invoiced directly after conclusion of the Agreement. The second 50% of the initial costs and the hardware costs that are included in the quote will be invoiced after the implementation of the Product.
- 7.3 The agreed upon license fee as stipulated in the Agreement will be billed in one invoice covering the first six months of the Agreement. This amount will be invoiced directly after conclusion of the Agreement. After these first six months, the license fee will be invoiced on a quarterly basis, either by direct debit or per invoice dependent on what is agreed upon by Parties.
- 7.4 If Buyer is in default with regard to the timely payment of an invoice, then User may add an interest rate of 1% per month, unless the statutory interest is higher, in which case the statutory interest is payable

- (as is in 6:119a Dutch Civil Code). The interest on the amount due will be calculated from the time Buyer is in default until the moment of receipt of the full amount by User.
- 7.5 User can refuse an offer for payment by Buyer without being in default, if the payments made by Buyer do not correspond to the order in which the invoices were made. User can refuse any payment made by Buyer, if the amount paid does not include ongoing interest and preauthorized costs.
- 7.6 Buyer is in no event entitled to set off any amounts owed by him to User to amounts owed to him by User.
- 7.7 Objections made by Buyer in relation to the amount payable will in no event suspend the obligation to pay such amount.

### 8 Retention of title

- 8.1 All Products delivered/made available to Buyer by User remain the property of User until Buyer has met in full all of the obligations under the Agreement; this to be decided at the User's discretion.
- 8.2 Products delivered by User and which are covered by retention of title as provided for under paragraph 1 of this article may only be sold by Buyer in the course of normal business operations and may not under any circumstances be used as a means of payment. If the Products are resold, Buyer further undertakes to transfer them under retention of title. Buyer is not authorized to pledge or encumber in any other way the Products covered by retention of title.
- 8.3 Buyer shall protect and respect User's property rights to the Product.
- 8.4 In the event that any third party imposes attachment on the Products delivered under retention of title or any third party undertakes any action that has as its object to establish or invoke any rights in relation to the Products delivered under retention of title, Buyer is obligated to notify User of any such action as soon as may reasonably be expected.
- 8.5 Buyer shall ensure that he is sufficiently insured and will stay insured for the duration of this Agreement. Buyer is obligated to be and stay insured for Products delivered under retention of title. Such insurance must at least cover any damages or loss incurred as a result of fire, explosion, water damage and theft. Buyer will provide User with a copy of its insurance policy before conclusion of the Agreement.
- 8.6 If User at any time wishes to exercise its property rights under the Agreement Buyer hereby grants User or any third party hired by User for this purpose unconditional and irrevocable permission to enter the places/grounds where User's property of is located at that specific time and to take its property.
- 8.7 The risk of loss, damages or depreciation of the Products transfers from User to Buyer at the moment Buyer receives the Products. The transfer of risk does therefore not coincide with the transfer of property.

### 9 Guarantee, research and complaints, statute of limitation

- 9.1 The Product comes with a two year warranty, which period commences on the day of delivery, unless Parties have agreed otherwise in writing.
- 9.2 Warranty on the Products is limited to:
- a. production errors and therefore does not include damage caused by for instance, but not limited to wear and tear;
  - b. repair or substitution of the item;
- and does not cover travel costs, transportation costs and damages caused by assembly or disassembly;
- 9.3 This warranty does not apply:
- a. in case of any alterations, modifications or changes made to the Product by Buyer or any third party at the request of Buyer, without the written consent of User;
  - b. in case the defect is caused by or results from improper or inappropriate use, improper storage or maintenance by Buyer and/or any third party;
  - c. when the Products are sold by Buyer to any third party, unless the Parties have expressly agreed otherwise;
  - d. when the Product is used for any purpose other than indicated; or Buyer does not use the Product in accordance with the instruction manual or instructions given by User;
  - e. for as long as Buyer fails to comply with its obligations under the Agreement.
  - f. the defect of (part of) the Product is caused by or arises from any circumstances that are outside User's control, including but not limited to weather conditions (for instance, but not limited to extreme temperatures or rainfall),
- 9.4 Buyer shall immediately examine the delivered Products when they are made available to him. Buyer shall examine and determine whether the quality and/or quantity of the delivered Products corresponds with the Agreement. Any alleged visible defects after delivery must be reported in writing to User within 7 days. Any alleged non-visible defects must be reported in writing to User immediately and in any event no later than within 14 days after discovery. Notification of any alleged defect must at least include a detailed description of the alleged defect, as to enable User to respond adequately. Buyer must provide all necessary information to User as to enable User to examine complaint.
- 9.5 If Buyer submits a claim in time (as stipulated in 9.4), this does not influence its payment obligations under the Agreement. Buyer remains obligated to accept and pay for the Products delivered.

- 9.6 If an alleged defect is reported later than defined in 9.4, Buyer will no longer be entitled to repair or replacement free of charge or any compensation by User.
- 9.7 If it is determined that the Product has a defect and Buyer informed User on time, User is entitled to, at its sole discretion, to replace or repair the Product.
- 9.8 If User determines that the claim under 9.4 has no merit, then Buyer is obligated to compensate User for all costs made in respect of the claim, including but not limited to costs for research.
- 9.9 Notwithstanding the statutory limitation periods, the limitation period for all claims under this article constitutes one year starting on the day of discovery of the alleged defect.

## 10 Liability

- 10.1 In the event of User being held liable, that liability shall be limited to the provisions of this clause.
- 10.2 User will in no event be liable for any damages, of any kind that:
- are caused by or result from late, incomplete or incorrect information provided by Buyer;
  - are caused by or result from operating errors caused by Buyer and / or damage to the Product that are a result from or are caused by Buyer after installation of the Product;
  - are caused by or result from the installation of the Product, if such installation is carried out by Buyer or any third party engaged by Buyer for this purpose;
  - are caused by or result from any act or omission of any third party engaged by Buyer during the implementation of the Product or any time thereafter;
  - result from the improper use of the Product by Buyer;
  - are caused by or result from any advice given in any way, shape or form by User to Buyer;
  - are caused by or result from the application of the Product by Buyer for any other purpose than that stipulated in the Agreement, unless User has approved such deviating application in writing;
  - are caused by or result from the modification of the Product if such modification was made by Buyer, without User's written consent.
- 10.3 User will only be liable for direct damages. User will in no event be liable for indirect losses, including consequential losses, loss of income, missed savings or losses caused by business stagnation.
- 10.4 User's liability arising out of or in connection with the Agreement shall be limited to direct losses only, whether arising from contract, any unlawful act, negligence or otherwise. User's liability will be limited to the amount his insurer reimburses in the case at hand or EUR 20.000,- which ever amount is lower.

## 11 Indemnity

- 11.1 Buyer shall indemnify and keep indemnified User from all claims made by third parties and all direct, indirect and consequential liabilities, costs, proceedings, damages, losses and expenses (including legal and other professional expenses), awarded against, or incurred or paid by User as a result of or in connection with:
- any breach of any of Buyer's obligations under the Agreement or any statutory or regulatory breach;
  - any claim made for any liability, loss, damage or costs incurred by User relating to or arising from any direct or indirect breach of the obligations under the Agreement, any fraud or failure to perform under the Agreement by Buyer.
- 11.2 In the event that a claim or dispute is brought against User by a third party, Buyer is obligated to assist User in any way possible and without delay, by for instance providing necessary information. If Buyer fails to adequately assist User, then User will be entitled to enter Buyer's property/grounds and retrieve all necessary information in connection to the claim or dispute. All costs relating to retrieving of such information, either by Buyer or User, will be borne by Buyer.

## 12 Intellectual property

- 12.1 Parties acknowledge and agree that any existing intellectual property rights of User shall continue to be owned by User. Nothing herein shall constitute a transfer or license to use existing intellectual property rights, unless explicitly granted under the Agreement.
- 12.2 Parties acknowledge and agree that any Confidential Information (as defined below), any intellectual property rights and any know how developed, created or acquired (other than on the basis of license or consisting of data generated by the vehicles) by or on behalf of User and at the cost of User after the date of this Agreement shall belong to User.
- 12.3 User has the right to suspend or terminate the Agreement if it can be reasonably assumed that work is copied by Buyer or a third party which is related to Buyer, without the explicit prior written consent of User. The right to suspension or termination is not a sole remedy and User may exercise any other remedies available at law.
- 12.4 Buyer is not entitled to copy or imitate any work from User, including models, algorithms, technologies and designs.
- 12.5 Violation of article 12.4 leads to a penalty payment of EUR 100,000,- per violation to User. The penalty is not a sole remedy and User may exercise any other remedies available at law.
- 12.6 Buyer shall immediately bring any improper or wrongful use or infringement of User's intellectual property rights, which comes to Buyer's notice, to the attention of User, and shall in and about the execution of Buyer's duties use every effort to safeguard the property, rights and interests of User and

shall assist User at its request in taking all steps necessary to defend User's rights other than by the institution of legal proceedings.

### 13 Confidentiality

- 13.1 Parties intend to disclose to each other Confidential Information under or in connection with the Agreement. For the purpose of the Agreement "Confidential Information" means any information of any kind whatsoever (whether written, oral, visual, electronic or of another type) furnished in connection with the Product or the Agreement by a Party or its affiliates ("Disclosing Party") to the other party or its affiliates ("Recipient") at any time whatsoever (whether before or after execution of the Agreement). Confidential Information does not include information of which the Recipient can demonstrate it:
- was already in the public domain at the time of its disclosure to the Recipient;
  - came into the public domain after its disclosure to the Recipient otherwise than through a breach of the Agreement;
  - was, as evidenced by the written records of the Recipient, lawfully in the Recipient's possession prior to its disclosure by the Disclosing Party and was not acquired directly or indirectly from the Disclosing Party; or
  - came lawfully into the Recipient's possession on a non-confidential basis from a third party who is not in breach of any secrecy or confidentiality obligation to the Disclosing Party.
- 13.2 Any data collected from Buyer's vehicles or Products remains Buyer's property even after termination of the Agreement. During the Agreement User is entitled to obtain this data from Buyer and analyze such data for the reason of improving User's vehicle energy management system. The result of any analysis carried out by User using data collected by Buyer will be User's property and will remain User's property even after termination of the Agreement, irrespective of the reason for termination or the Party that terminates. User is entitled to anonymously publish this proprietary data
- 13.3 If either Party is legally compelled to disclose any Confidential Information by any governmental or regulatory authority or court, that Party shall immediately, before disclosing such Confidential Information, notify the Disclosing Party in writing about the specifics of the order, writ or subpoena, in order to co-ordinate such disclosure. The Party compelled to disclose the Confidential Information shall co-operate with the Disclosing Party and take all steps requested by the Disclosing Party in order to prevent or limit such forced disclosure to the maximum extent possible.
- 13.4 If User is compelled to disclose the Confidential Information it is not liable to Buyer for any damages or loss resulting from the disclosure of the Confidential Information. User has the right to terminate the Agreement if any Confidential Information is disclosed by Buyer and Buyer will be liable for any damages or loss incurred by User in connection to the disclosure.

### 14 Applicable law

- 14.1 The Agreement and any dispute or claim arising out of or in connection with it shall be governed by the laws of The Netherlands. The Convention on International Sale of Goods is expressly excluded.
- 14.2 Parties agree that the court of Amsterdam has exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement.
- 14.3 Parties hereby agree to use their best efforts to settle any claim or dispute arising out of or in connection with the Agreement out of court. If such settlement cannot be reached, Parties will have the right to pursue its claim before the competent court.

### 15 Miscellaneous

- 15.1 Without prior written consent of User, Buyer is not entitled to transfer any of its obligations, rights or claims under the Agreement or in relation to a breach of the Agreement.
- 15.2 User is entitled to set off any and all claims with regard to payments due or future payments due to Buyer against any claim arising in relation to the Agreement, irrespective of whether such set off came about after such order by Buyer.
- 15.3 Any waiver of a breach of, or default under, any of the terms of the Agreement shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Agreement.
- 15.4 The failure or delay by User in exercising any right, power or remedy that it might have under the Agreement or these Terms and Conditions shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by User of any right, power or remedy under the Agreement shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy hereunder.
- 15.5 The limitation period for all claims under or in connection with the agreement will expire after one (1) year, starting on the day that the party becomes aware or should have been aware of the grounds for the claim.
- 15.6 Any notices to be given under the Agreement shall be in writing and shall be sent by registered mail. Any such notice shall be deemed to have been received after expiration of 48 hours after the envelope containing the notice has been put in the post.