



CHAPTER 1 – GENERAL

1. Definitions

(1) In these terms and conditions, the following terms have the meaning provided below.

CMO	Collective management organisation, which manages IP rights for its members.
IP rights	All intellectual property rights. These include, <i>inter alia</i> , copyrights and neighbouring rights, portrait rights, database rights, trademark rights, rights to models whether registered or not, rights to inventions whether patented or not, trade name rights, rights to the use of a domain name.
Agreement:	An agreement in which the counterparty undertakes or has undertaken to deliver to ThiemeMeulenhoff. A delivery may relate, <i>inter alia</i> , to goods, rights or services. These terms and conditions do not apply to employment contracts concluded with ThiemeMeulenhoff.
ThiemeMeulenhoff:	<ol style="list-style-type: none"> 1. ThiemeMeulenhoff B.V.; or 2. Any participating interest of ThiemeMeulenhoff B.V. unless the latter has stipulated that other terms and conditions shall apply; or 3. Any group company of ThiemeMeulenhoff B.V. that is not a participating interest of ThiemeMeulenhoff B.V. and has stipulated that these terms and conditions shall apply.
counterparty:	<ol style="list-style-type: none"> 1. Any natural or legal person with whom ThiemeMeulenhoff concludes an agreement; 2. Any natural or legal person with whom ThiemeMeulenhoff communicates or communicated about an agreement, including by requesting information, an offer or by making a proposal.
or	and/or
including	including, but not limited thereto

(2) In these terms and conditions, references to an article in any regulation shall also constitute a reference to the article in that regulation that, following any amendment to this regulation, has the same subject.

(3) These terms and conditions contain the following chapters:

- Chapter 1 – General
- Chapter 2 – IP Rights
- Chapter 3 – Movable goods
- Chapter 4 – IT development and IT services

2. Applicability of terms and conditions

(1) These terms and conditions apply to all agreements between ThiemeMeulenhoff and a counterparty.

(2) These terms and conditions also apply if ThiemeMeulenhoff in turn delivers to the counterparty. In this event, ThiemeMeulenhoff's terms and conditions of sale or of delivery also apply to the goods to be delivered by ThiemeMeulenhoff.

(3) These terms and conditions also apply to legal relationships between ThiemeMeulenhoff and a counterparty other than those arising from an agreement.



- (4) In the event that **chapter 1** deviates from a special chapter, the special chapter shall take precedence. Several special chapters may jointly apply to an agreement. If this results in inconsistencies, the chapter with the closest affinity to the agreement in question shall take precedence.

3. Amendment of terms and conditions

- (1) ThiemeMeulenhoff is entitled to amend these terms and conditions. Unless the counterparty objects to the amended terms and conditions within four weeks of receipt of notification of the amendment, the amended terms and conditions shall apply to the agreement. If the counterparty objects to the amended terms and conditions, they shall have the right to terminate the agreement without being liable to pay compensation to ThiemeMeulenhoff if:
- (a) they notify ThiemeMeulenhoff, in writing, that they wish to terminate the agreement on account of the amendment to the terms and conditions; and
 - (b) ThiemeMeulenhoff does not inform the counterparty, within four weeks of receipt of that notification, that it wishes to continue the agreement subject to the old terms and conditions.

4. Terms and conditions of counterparty

- (1) General terms and conditions of the counterparty do not apply.
- (2) If an agreement stipulates that the general terms and conditions of the counterparty apply in addition to these general terms and conditions, this shall mean that, if a subject is covered in these terms and conditions, only these terms and conditions shall apply.

5. Derogation from terms and conditions

- (1) Parties may deviate from these terms and conditions in an agreement provided such deviations are recorded in writing and the entire agreement, including the deviations, is concluded in accordance with **article 6**.
- (2) Deviations from these terms and conditions to the detriment of ThiemeMeulenhoff shall apply solely to the agreement that derogates from these terms and conditions.

6. Formation of an agreement

- (1) An agreement shall be concluded only if the competent person at ThiemeMeulenhoff places his signature on the agreement – which shall include an electronic signature. Signing by means of an electronic signature may also be done by the competent person placing his scanned signature on the agreement. An agreement shall also be concluded if the competent person at ThiemeMeulenhoff unequivocally confirms by other written means that consensus has been reached regarding both the price and all other conditions of the agreement. That person's authority shall be evidenced by the registration with the chamber of commerce.
- (2) If the counterparty delivers without an agreement, they shall do so at their own risk. ThiemeMeulenhoff is not required to make payment for or in connection with anything delivered to it without an agreement.
- (3) A request for proposal (such as in the form of an offer) shall not be binding upon ThiemeMeulenhoff. The execution of an agreement shall never result in the right to conclude a follow-up agreement.

7. Remuneration

- (1) All remuneration is in euros and excludes VAT, if applicable.
- (2) The remuneration excludes other levies, such as import duties, to the extent that such levies are mentioned in the agreement.
- (3) Remuneration will not be index-linked or otherwise adjusted.
- (4) Remuneration comprises all the counterparty's costs.



- (5) In the event of a continuing performance agreement concluded for an indefinite period the counterparty shall be entitled, after the first, full, calendar year has elapsed, to increase the remuneration for the goods to be delivered in a subsequent calendar year in line with the consumer inflation figure (“inflatiecijfer consumenten”) for the calendar year preceding that year, published by CBS (Central Bureau for Statistics, Netherlands).

8. Payment

- (1) Payment shall be made after delivery. In the event of a continuing performance agreement, payment shall be made quarterly within 45 days of the end of that quarter.
- (2) ThiemeMeulenhoff shall make payment within 45 days of receipt of the invoice from the counterparty.
- (3) If the payment term is exceeded, this shall not entitle the counterparty to suspend their performance.
- (4) Invoices must be sent to: ThiemeMeulenhoff B.V., Attn. Financial Administration department, PO Box 400, 3800 AK Amersfoort, the Netherlands, or submitted in another manner to be stipulated by ThiemeMeulenhoff. The invoice can also be sent by e-mail as a PDF to facturen@thiememeulenhoff.nl.
- (5) The counterparty must itemise on the invoice and accompanying documents the project number, invoice date, invoicing address, name of the contact person at ThiemeMeulenhoff and publication/project and the work done. Failure to do so shall entitle ThiemeMeulenhoff to suspend payment.

9. Duration

- (1) In the case of a continuing performance agreement, ThiemeMeulenhoff shall be entitled to stipulate that the initial term of such an agreement is one year, or such shorter period as ThiemeMeulenhoff shall deem appropriate. Parties may agree an initial term of more than one year. The counterparty may not terminate the agreement during that initial term. Unless terminated, the continuing performance agreement shall continue after that initial term and shall then be for an indefinite period. If ThiemeMeulenhoff does not stipulate an initial term or the parties do not agree an initial term, the continuing performance agreement shall be concluded for an indefinite period.
- (2) During the first year, a continuing performance agreement may be terminated by ThiemeMeulenhoff subject to a notice period of one month and, unless an initial term has been agreed as stipulated in the **preceding clause**, by the counterparty subject to a notice period of three months. During subsequent years, such an agreement may be terminated by ThiemeMeulenhoff subject to a notice period of three months and by the counterparty subject to a notice period of six months.
- (3) The first three months of a continuing performance agreement will be a trial period for ThiemeMeulenhoff. During that period ThiemeMeulenhoff may decide, for reasons of its own, to terminate the agreement without becoming liable for compensation in any way.

10. Specifications and information

- (1) The goods to be delivered will meet the agreed specifications.
- (2) In case of delivery of texts, designs or software other than based on specifications, or other deliveries regarding which the decision as to whether they are satisfactory will entail a more or less subjective appraisal, the goods to be delivered must in any event possess, as a minimum, the qualities that may be expected of a delivery by an expert acting in a reasonable manner.
- (3) If a digital file is to be delivered, that file must be of a type and size to be specified by ThiemeMeulenhoff, failing which it must be possible to read the file with commonly used software and it must be of a size that is widely usable.



11. Information

- (1) ThiemeMeulenhoff will provide the counterparty with information which it reasonably believes to be adequate for the performance of the agreement. The responsibility for the completeness of the information rests with the counterparty who, based on their expertise, is deemed to know what information they require. ThiemeMeulenhoff shall only be liable if, despite a request by the counterparty, it nonetheless supplies incomplete or inaccurate information.
- (2) The counterparty will itself obtain sufficient information about the purpose being pursued by ThiemeMeulenhoff with the aid of the goods to be delivered. The counterparty will also obtain sufficient information about the organisation of ThiemeMeulenhoff. The goods to be delivered will be appropriate for that purpose and will be suitable for use by the organisation of ThiemeMeulenhoff.
- (3) Based on the information, the counterparty will form a considered opinion as to whether they are able to deliver accurately and on time.

12. Instructions

- (1) The counterparty shall follow the reasonable instructions of ThiemeMeulenhoff.
- (2) In the case of a delivery of texts or design or other deliveries regarding which the decision as to whether they are satisfactory entails a more or less subjective appraisal, the counterparty will fully adapt the items delivered, at least once and without additional remuneration, in accordance with ThiemeMeulenhoff's instructions, and several times in case of components thereof. All this shall apply unless the counterparty proves that the instructions given by ThiemeMeulenhoff were indisputably unreasonable with regard to:
 - (a) the extent to which the delivery already meets the requirements of the order; and
 - (b) the scope of the work requested by ThiemeMeulenhoff,in which case the additional work in question will, to the extent that it is unreasonable, be paid for by ThiemeMeulenhoff as contract extras.

13. Time limits

- (1) All time limits in an agreement shall be strict deadlines.
- (2) If the counterparty has indications that they cannot deliver within the stipulated time, they shall notify ThiemeMeulenhoff immediately, stating the nature of those indications and the possible delay in fulfilment, in order that ThiemeMeulenhoff can attempt to prevent or limit any loss or damage it may suffer.

14. Contract extras

- (1) If ThiemeMeulenhoff asks the counterparty to deliver more than is specified in an agreement, this shall constitute contract extras. ThiemeMeulenhoff shall be entitled to make such a request at any time and the counterparty shall be obliged to comply with such a request, unless it is not possible for them to do so.
- (2) The remuneration for contract extras will be determined in the same manner as the remuneration with regard to the agreed deliveries.
- (3) The addition to an agreement of contract extras shall only come into effect in the manner in which an agreement comes into effect under these terms and conditions.

15. Personnel

- (1) The counterparty shall ensure that personnel they will be deploying shall possess adequate qualifications with a view to the goods to be delivered. The counterparty guarantees that the personnel he will be deploying shall at least satisfy the requirements that may be set for personnel of a comparable supplier, as an expert acting in a reasonable manner.
- (2) If ThiemeMeulenhoff can reasonably be of the opinion that this is not the case with regard to certain persons, the counterparty will substitute those persons.



- (3) The counterparty will not deploy any personnel working for competitors of ThiemeMeulenhoff, without the latter's prior approval.

16. Contact persons

- (1) Parties shall designate a contact person who is responsible for the performance of the agreement.
- (2) Contact persons may bind the parties to the extent that acts relating to the performance of the agreement are concerned.

17. Engaging third parties

- (1) The counterparty will not engage any third parties in the performance of an agreement without the consent of ThiemeMeulenhoff.
- (2) If ThiemeMeulenhoff agrees to the engagement of a third party, the counterparty shall remain fully responsible and liable for the performance of the agreement concerned.

18. Hiring in personnel (secondment)

- (1) In the event that ThiemeMeulenhoff is recipient of personnel pursuant to Article 34 of the Dutch Collection of State Taxes Act 1990 (*Invorderingswet* 1990) or believes there is a chance it will be considered as such, ThiemeMeulenhoff shall at all times be entitled to require that:
 - (a) it may pay the amounts for which it may be liable as a recipient to a blocked account (*g-rekening*) (as referred to in Article 34, paragraph 3 of the Dutch Collection of State Taxes Act 1990); or
 - (b) it may pay the amounts for which it may be liable as a recipient to a blocked account (*g-rekening*) (as referred to in Article 34, clause 3 of the Dutch Collection of State Taxes Act 1990); orthe counterparty otherwise and to ThiemeMeulenhoff's satisfaction provides security that ThiemeMeulenhoff cannot be held liable. ThiemeMeulenhoff shall be entitled not to pay the sums for which it may be held liable, plus an amount to cover the costs incurred by ThiemeMeulenhoff in that event, until such time as the counterparty has made a blocked account available or has otherwise provided adequate security.
- (2) ThiemeMeulenhoff will ensure that the working conditions of the counterparty's employees seconded to it are in accordance with the relevant requirements in or pursuant to law.

19. Access and security

- (1) The counterparty will at all times abide by the access and security protocols and other company rules of ThiemeMeulenhoff.
- (2) To the extent relevant to the goods it is required to deliver, the counterparty will at all times acquaint themselves with the rules in force at ThiemeMeulenhoff and the restrictions and facilities at its locations.

20. Ownership of materials

- (1) ThiemeMeulenhoff will be the owner of all materials created or acquired in the performance of an agreement.

21. Rights to goods provided by ThiemeMeulenhoff

- (1) If ThiemeMeulenhoff provides the counterparty with goods for the purpose of the performance of an agreement, ThiemeMeulenhoff shall retain ownership of those goods and, if those goods are wholly or partially subject to an IP right, shall also retain ownership of the relevant IP rights.
- (2) In the latter event, ThiemeMeulenhoff issues the counterparty with a non-exclusive licence for the sole purpose of performing the agreement and to undertake the necessary acts to that end with regard to those goods.



- (3) Once the need for those acts ends, and in any event after the agreement has ended, the licence will expire and the counterparty will surrender the goods concerned, to the extent that they are still in their possession, or will destroy them if ThiemeMeulenhoff so requires, this at the counterparty's expense.

22. Privacy

- (1) The counterparty shall abide by the relevant privacy laws and the guidelines of enforcement bodies, best practices and self-regulation based thereon.
- (2) The counterparty shall not divulge to any third party without prior permission from ThiemeMeulenhoff personal data for which ThiemeMeulenhoff is responsible and of which he gains possession while or as a result of performing an agreement and he shall process these data solely in accordance with the relevant regulations and instructions of ThiemeMeulenhoff. In the event that such data are acquired without any legal basis, the counterparty shall immediately notify ThiemeMeulenhoff and the latter will then give instructions to either remove the data or transfer the data to it.
- (3) To the extent that the counterparty is a processor (*Bewerker*) pursuant to the Dutch Personal Data Protection Act (*Wet Bescherming Persoonsgegevens*, "WBP"), an agreement shall constitute an agreement pursuant to Article 14, paragraph 2 WBP.
- (4) The counterparty shall secure the personal data in accordance with the requirements applicable to such security measures. They shall record their security measures in writing and provide ThiemeMeulenhoff with a copy thereof on demand. ThiemeMeulenhoff shall be entitled to have independent experts examine and determine the quality of and the compliance with the security measures. The counterparty shall cooperate with the investigation of the experts hired by ThiemeMeulenhoff immediately and without additional compensation. ThiemeMeulenhoff shall not have this right if the counterparty regularly has independent experts examine whether its security measures are adequate and complied with. In this case, the counterparty shall inform ThiemeMeulenhoff of the results of these investigations.
- (5) The counterparty shall immediately report all security incidents and data breaches to ThiemeMeulenhoff. Upon request, the counterparty is obliged to cooperate free of charge in informing the parties involved.
- (6) ThiemeMeulenhoff will ensure the correct use of the personal data and may use control data to this end. If the counterparty performs an action involving one or more items of control data, this shall constitute full proof vis-à-vis the counterparty that such action was performed in regard to several items of personal data, subject to proof of the contrary by the counterparty.
- (7) The counterparty shall refrain from engaging third parties who process the personal data ("subprocessors") without the prior written consent of ThiemeMeulenhoff. Should ThiemeMeulenhoff allow the use of a subprocessor, the counterparty shall conclude an agreement with the subprocessor imposing all obligations in this Article to which the counterparty is subject to the subprocessor.
- (8) Without prior written consent from ThiemeMeulenhoff, the counterparty shall not process any personal data outside the Netherlands.
- (9) ThiemeMeulenhoff shall be entitled to revise the privacy provisions in an agreement if in its opinion, a modification in the processed personal data or in the security measures give rise thereto.
- (10) ThiemeMeulenhoff will periodically evaluate the processing of personal data by the counterparty. The counterparty shall adjust the processing according to the instruction of ThiemeMeulenhoff without additional remuneration.
- (11) After the expiry of an agreement, the counterparty will transfer all personal data to ThiemeMeulenhoff, will themselves cease all use of those data and will remove those data from their systems in such a way that they can no longer access these data, unless the law stipulates otherwise.



23. Ethical code

- (1) The counterparty shall ensure that the goods to be delivered have not and will not be produced by children aged under 15 years or in a manner that might prejudice the health, education or development of children.
- (2) The counterparty shall not prevent their employees and those of their subcontractors from joining a trade union.
- (3) The counterparty shall ensure that the goods to be delivered are produced under generally accepted working conditions, in accordance with the laws and regulations.
- (4) Any delivery and subsequent deliveries by the counterparty that are produced in contravention of this article may be rejected by ThiemeMeulenhoff and the agreement may be wholly or partially dissolved, without ThiemeMeulenhoff being liable to pay any form of compensation. The counterparty shall reimburse the damages suffered by ThiemeMeulenhoff as a result of the dissolution of the agreement.
- (5) The counterparty shall not in any manner exert influence over the employees of ThiemeMeulenhoff in order to persuade ThiemeMeulenhoff to conclude an agreement. The counterparty shall in any event be deemed to be exerting such influence if they offer the employees of ThiemeMeulenhoff any personal benefit that exceeds what is deemed appropriate in normal business dealings.
- (6) ThiemeMeulenhoff may at any time wholly or partially dissolve or annul an agreement whereby the influence referred to in **the preceding clause** has been exerted, without ThiemeMeulenhoff thereby becoming liable to pay any form of compensation. The counterparty shall reimburse the damages suffered by ThiemeMeulenhoff as a result of the agreement and its dissolution or annulment.

24. Acceptance

- (1) The counterparty shall only be deemed to have fulfilled their obligation to deliver once the goods to be delivered have been accepted by ThiemeMeulenhoff.
- (2) Acceptance by ThiemeMeulenhoff can only be done in writing, by the competent representative.
- (3) Payment or delivery shall not constitute acceptance.
- (4) Acceptance shall not prevent ThiemeMeulenhoff from subsequently invoke the argument that the delivered goods do not comply with the agreement. The same shall apply to defects that ThiemeMeulenhoff could have discovered at the time of acceptance.

25. Defects affecting the delivered goods

- (1) Any discrepancy affecting the goods delivered in regard to what was agreed shall cause the counterparty to be in default and, if a strict deadline has been agreed, shall also cause the counterparty to have attributably failed in their performance.
- (2) Inaccuracies in texts or images shall be defects as stipulated in the **preceding clause**, unless ThiemeMeulenhoff deems them to be of such insignificance that it does not consider it necessary to incur costs in order to repair those defects. Such defects shall remain the responsibility of the counterparty, even if the texts or images containing the defects have been accepted by ThiemeMeulenhoff's (final) editorial department, or have been published.
- (3) The counterparty shall ensure at ThiemeMeulenhoff's request (and without prejudice to the other rights of ThiemeMeulenhoff under the law or these terms and conditions) that the defects are eliminated.
- (4) If ThiemeMeulenhoff discovers that the delivered goods are not in accordance with what was agreed, ThiemeMeulenhoff will notify the counterparty accordingly within three months. Article 6:89 Dutch Civil Code does not apply.



- (5) If ThiemeMeulenhoff is aware that a delay in notifying deviations from what was agreed might incur higher repair costs for the counterparty, it will endeavour to notify the counterparty of those defects as soon as possible.

26. Early termination or interim amendments

- (1) Without prejudice to its rights under the law or these terms and conditions, ThiemeMeulenhoff may terminate an agreement early or make interim changes to it at any time.
- (2) In the event of early termination, ThiemeMeulenhoff shall pay for what the counterparty has delivered at the time of termination. It shall only add the costs of the agreed future deliveries to this amount to the extent that those costs have already been incurred by the counterparty or they will necessarily incur those costs on the basis of commitments entered into with third parties.
- (3) In the event of a change resulting in a smaller delivery, ThiemeMeulenhoff shall pay the counterparty for what has yet to be delivered, at the agreed price. Furthermore, ThiemeMeulenhoff shall pay the costs of the agreed future deliveries that no longer have to be delivered following the change, to the extent that those costs have already been incurred by the counterparty or the latter will necessarily incur those costs on the basis of commitments entered into with third parties.
- (4) Loss of profit suffered by the counterparty shall not be eligible for reimbursement.

27. Termination in exceptional circumstances

- (1) Without prejudice to its rights under the law, ThiemeMeulenhoff shall be entitled, without in any way being liable to pay compensation, to terminate an agreement without notice, notice of default or judicial intervention if:
- the counterparty is in default of their obligations, unless the default is insignificant;
 - a petition is filed for the bankruptcy of the counterparty, or they are declared bankrupt;
 - the counterparty applies for a suspension of payment, or such moratorium is granted to them;
 - the counterparty can no longer dispose of their assets or loses the power to dispose of those assets to a significant extent, as a result of attachment or otherwise, and this situation persists for longer than two months after first arising;
 - ThiemeMeulenhoff has justified reasons for doubting the counterparty's capacity to meet their obligations or to do so in a timely manner.

28. Knowledge at ThiemeMeulenhoff

- (1) The counterparty may only call upon the knowledge available at ThiemeMeulenhoff if the counterparty demonstrates that this knowledge is possessed by the person at ThiemeMeulenhoff who is responsible for the performance of the agreement in question.

29. Records and communication

- (1) The digital or physical records and the log files of ThiemeMeulenhoff shall constitute full proof of its statements, unless the contrary is proved.
- (2) Digital means of communication are used at the risk of the party who chooses to use them. Without prejudice to the preceding clause, an e-mail placed in the sent items folder on the systems of ThiemeMeulenhoff shall be deemed to have been sent and received, unless the contrary is proved.

30. Liability

- (1) Liability for an attributable failure in the performance of an agreed commitment to pay a sum of money shall only result in ThiemeMeulenhoff owing the statutory interest referred to in Article 6:119 Dutch Civil Code. All other damages are excluded.



- (2) ThiemeMeulenhoff excludes all liability connected with any failure in the performance of a commitment other than that referred to **in clause 1 of this article** or resulting from any unlawful acts, except for liability for direct loss caused by gross negligence or intent on the part of persons belonging to the managerial staff of ThiemeMeulenhoff.
- (3) **Only if the exclusion of liability set out in the preceding clause would, in a specific case, be unreasonably onerous for the counterparty and is annulled, or otherwise cannot apply in a specific case, shall clauses 4 to 6 below apply.**
- (4) The liability of ThiemeMeulenhoff shall be limited to no more than the amount of the consideration for the goods to be delivered by the counterparty, less the costs saved by the counterparty. The counterparty shall provide ThiemeMeulenhoff with full disclosure of the amounts they have saved.
- (5) In case of an agreement concluded for a duration of more than three months, the maximum liability shall be the amount of the remuneration paid by ThiemeMeulenhoff over the three months prior to the damaging event.
- (6) The liability shall at all times be limited to direct loss suffered by the counterparty. Direct loss shall solely denote the out-of-pocket costs necessarily incurred by the counterparty in connection with the damaging event. Loss of goodwill, current or future turnover or profit, claims by third parties on account of other than direct loss, employee hours and the like, shall not be eligible for reimbursement.
- (7) Without prejudice to ThiemeMeulenhoff's other rights under an agreement or under the law, the counterparty shall be liable for all damages (including, inter alia, to prevent misunderstandings, the legal costs) suffered by ThiemeMeulenhoff if they attributable fail or act unlawfully vis-à-vis ThiemeMeulenhoff. The counterparty shall indemnify ThiemeMeulenhoff against all claims by third parties connected with such attributable failures or unlawful actions.
- (8) In derogation of the preceding clause, a counterparty who:
 - (a) is self-employed without staff or a freelancer; and
 - (b) writes texts or produces images or supervises third parties who do so, or edits, corrects or checks the texts or images of those third parties;
 shall only be liable for a defect up to a maximum of 50% of the amount due to them relating to the order during the performance of which the defect occurred. If the order in question partly involves supervising third parties and those third parties made an error, the amount of the maximum liability shall be increased by 50% of the amount due to those third parties relating to the order during the performance of which the defect occurred. The liability shall in no way be limited in the event of gross negligence or intention on the part of the counterparty or if the liability arises from violation of a non-competition clause, a confidentiality clause or an infringement of any IP right.

31. Force majeure

- (1) A party shall not be liable for compensation if the fault for the failure does not lie with them and they are not accountable for the failure by virtue of the law, a legal act or generally accepted practices.

32. Confidentiality

- (1) Parties will not in any manner divulge to third parties or publicise confidential information of the other party. Parties will maintain secrecy regarding confidential information and take all reasonable measures to guarantee that confidentiality.
- (2) "Confidential" denotes all financial information, information marked as such by a party and all other information the confidential nature of which is evident or should in fairness be evident.
- (3) Parties need not observe secrecy to the extent that it is necessary to provide information on the basis of statutory duty, to the extent that such information is provided to advisors who are bound by confidentiality or if such information is already public and generally accessible, other than as a result of failure by the party concerned.
- (4) The counterparty shall owe ThiemeMeulenhoff a penalty of EUR 25,000 for each time they act in contravention of the stipulations and prohibitions set forth in this article, plus the sum of EUR 1,000 for each day that such violation persists, without prejudice to ThiemeMeulenhoff's right to demand from the counterparty fulfilment of this obligation or the full damages it has suffered. The counterparty shall, inter alia, be held accountable for



actions and omissions by their employees (including temporary staff and staff seconded to ThiemeMeulenhoff), other employees and contractors (including accountants and lawyers and other advisors).

33. Change of control

- (1) A change of control of the counterparty pursuant to Article 1(d) of the Dutch Merger Code 2000 published by the Netherlands Social and Economic Council (*SER fusiegedragsregels*), or the direct or indirect alienation of an interest exceeding 30% of the economic interest in the counterparty's company, shall entitle ThiemeMeulenhoff to terminate an agreement without being liable to pay compensation for having done so.

34. Declaration of Independent Contractor Status

- (1) This article applies if the counterparty is self-employed without staff, a freelancer, a sole trader or a partnership whereby, the goods to be delivered to ThiemeMeulenhoff can, because of their nature, duration and scope, be deemed by the Dutch Tax and Customs Administration to have been rendered on the basis of a "notional employment relationship".
- (2) The counterparty is a self-employed entrepreneur and must remain so for the duration of the agreement. The counterparty bears responsibility for all payments of taxes and contributions. For the duration of the agreement, the counterparty has a valid Independent Contractor Status Statement ("*Verklaring Arbeidsrelatie*"), which applies to the relationship between the counterparty and ThiemeMeulenhoff, hereafter referred to as: "**VAR**".
- (3) The counterparty will provide ThiemeMeulenhoff with a copy of their VAR and of a valid identity document. For as long as ThiemeMeulenhoff does not have these two copies in its possession, it shall be entitled to withhold an amount from the remuneration due to the counterparty, equal to the probable employed persons insurance and social security insurance contributions, payroll tax and employer's contributions to the aforementioned insurances. Likewise, ThiemeMeulenhoff may withhold such an amount if it believes there is reason to assume that the VAR statement may not or no longer be valid. It will pay the unpaid amount to a blocked account or, in consultation with the counterparty, guarantee in another manner that it will not be held liable for payment of sums which, under the agreement, must be paid by the counterparty.
- (4) The counterparty indemnifies ThiemeMeulenhoff for the event that ThiemeMeulenhoff is called upon by the tax and/or social insurance authorities to pay payroll tax and/or unpaid social insurance premiums (both the employer's and employee's part) relating to the remuneration paid to the counterparty and any penalties and interest on underpaid tax that may be imposed by those authorities. ThiemeMeulenhoff may set off amounts owed by the counterparty against the amounts it owes to the counterparty.

35. Applicable law, competent court

- (1) All agreements and these terms and conditions are governed exclusively by the laws of the Netherlands.
- (2) All disputes arising from of or in connection with an agreement shall be submitted to the competent District Court 'Midden-Nederland', particularly, to the extent possible, to the Utrecht venue thereof.



CHAPTER 2 – IP RIGHTS

36. Applicability of chapter 2

- (1) This chapter applies if the delivered goods are also subject to any IP right, if they comprise one or more IP rights or if one or more IP rights are created as a result of the goods being delivered. Therefore this chapter shall also apply to the delivery (whether or not delivered by persons seconded to ThiemeMeulenhoff) of texts, images, designs, databases and software and all the IP rights thereto.
- (2) This chapter applies in conjunction with **Chapter 1** and in conjunction with the other chapters, the latter if and to the extent that the agreement concerned also relates to the subjects of those other chapters.

37. IP rights

- (1) Where:
 - (a) the goods to be delivered or the work resulting in any IP right were created or was performed for the benefit of, for the purpose of or under the supervision of ThiemeMeulenhoff; or
 - (b) the counterparty is aware that the goods or the result thereof will be used exclusively by ThiemeMeulenhoff; the counterparty hereby transfers to ThiemeMeulenhoff all IP rights to the goods to be delivered. This transfer thus relates to already existing and future IP rights.
- (2) If and insofar as the goods to be delivered already exist at the time of conclusion of the agreement and ThiemeMeulenhoff has agreed that those goods to be delivered or a particular part thereof will not be used exclusively by ThiemeMeulenhoff, ThiemeMeulenhoff hereby acquires a licence according it sufficient rights to use the delivered goods without impediment, for the purpose intended by ThiemeMeulenhoff and for the duration of the existence of the IP rights in question, unrestricted as to location and otherwise. These rights of use may be transferred or sublicensed at all time. This licence shall comprise both the right to claim compensation and the surrender of profits from an infringer, and the right to institute all injunctions and prohibitions, in or out of court.
- (3) To the extent enabled by law, the counterparty hereby waives vis-à-vis ThiemeMeulenhoff and all of its successors in title all of his moral rights, including those listed in Article 25 of the Dutch Copyright Act (*Auteurswet*).
- (4) The counterparty hereby irrevocably authorises ThiemeMeulenhoff to cooperate on the counterparty's behalf in all further acts, including "to the extent still required", in order to bring about or make more explicit the transfer, waiver of rights or licence described in this article. Additionally, the counterparty shall cooperate immediately and without payment with all further acts that ThiemeMeulenhoff deems necessary in order to bring about the transfer or licence or waiver of rights described above. For each day, as of three working days after receipt of the request for cooperation, on which the counterparty does not cooperate, he shall owe ThiemeMeulenhoff a penalty of EUR 500, without prejudice to ThiemeMeulenhoff's right to recover the full amount of its loss from the counterparty and without prejudice to ThiemeMeulenhoff's right to demand fulfilment of this provision. If and insofar as an agreement does not result in a transfer as referred to in this Article, for example, due to non-compliance with the written form requirement for such a transfer, ThiemeMeulenhoff will, by operation of law, obtain an exclusive licence, equal in content to the transfer described in this Article, notwithstanding the authorisation of the first sentence of this paragraph and without prejudice to the obligation of the counterparty to cooperate (under penalty of a fine should it refuse to do so) in realising the transfer.
- (5) As a result of the transfer and waiver of right, ThiemeMeulenhoff shall *inter alia* possess with regard to the goods delivered all the rights that an originator of a work who did not yet possess those rights holds pursuant to the Dutch Copyright Act, except for the right to oppose distortion, mutilation and other infringement that may be detrimental to the originator's honour and reputation. Consequently, ThiemeMeulenhoff shall hold the transferable, global right to publish all or part of the delivered goods and to reproduce them (including altering them) by all currently known methods and all future methods, without thereby owing, now or in future, any further remuneration, with the sole exception of non-transferable moral rights.



- (6) If the goods to be delivered contain a designation intended for use as a trademark, a domain name, a trade name, a model or a non-registered invention, as a result of the transfer described in this article Thieme-Meulenhoff shall furthermore have the right, as the entitled party, to register that designation as a trademark, a domain name, the trade name, the invention or the model in the relevant registers. The counterparty will not do this, unless ThiemeMeulenhoff unequivocally asks them to do so and, without prejudice to such unequivocal request, will thereafter immediately and without payment cooperate with a transfer to ThiemeMeulenhoff, and the costs of that transfer from the relevant registers will be borne by ThiemeMeulenhoff.
- (7) The counterparty guarantees that the transfer and licence described in, existing in or created under this article are lawful and do not contravene the rights of others. The counterparty guarantees that the goods to be delivered are not themselves contrary to any right of any third party, nor that they will be. The counterparty guarantees and warrants that his employees, staff, suppliers and any other third parties it engages will enable them to undertake the transfer, waiver of right and licensing described in this article.
- (8) If the counterparty uses third parties or products of third parties for the performance of an agreement, and if IP rights are or may be involved, it shall, upon the first request of ThiemeMeulenhoff, provide ThiemeMeulenhoff with a copy of the agreements concluded with these third parties. The counterparty may make the prices included in these agreements unreadable, as well as other provisions irrelevant to the assessment of the IP rights. With these copies and possibly any additional information (if necessary), the counterparty will ensure that ThiemeMeulenhoff is able to assess whether the counterparty complies with or will comply with the agreement in regard to the IP rights. Should it become evident or possible from the information provided that the counterparty is not able or will not be able to comply, this shall not imply that ThiemeMeulenhoff is longer entitled to claim compliance, compensation or other amounts owed to them. ThiemeMeulenhoff will only lose these rights if it expressly agrees in writing to the corresponding non-compliance.
- (9) The counterparty guarantees that no rights to the delivered goods are managed by a CMO unless he has indicated otherwise in accordance with the **following article**.
- (10) The remuneration provided for in an agreement shall also comprise a payment for the transfer, licence and waiver included in **this chapter or elsewhere**. This remuneration is fair and its fairness is hereby guaranteed by the counterparty. To the extent necessary, the counterparty hereby waives all their rights to any further remuneration whatsoever with regard to the IP rights.
- (11) The counterparty indemnifies ThiemeMeulenhoff against all damages (including, to prevent misunderstandings, all reasonable legal costs of ThiemeMeulenhoff) that ThiemeMeulenhoff suffers or will suffer if the counterparty does not honour their guarantee obligations under **this chapter**.
- (12) If the parties disagree regarding the question of which party is entitled to certain IP rights to the delivered goods, the counterparty must prove that ThiemeMeulenhoff is not so entitled.

38. CMO (Collective Management Organisation)

- (1) The counterparty has fully informed ThiemeMeulenhoff about their membership of one or more CMOs.
- (2) If the counterparty is a member of a CMO, the following shall apply:
 - (a) ThiemeMeulenhoff shall be entitled at all times to dissolve an agreement without thus being liable to pay compensation if, in its opinion, the terms of membership of the CMO give it reasonable cause to do so. In this event the counterparty shall immediately refund all amounts received. If ThiemeMeulenhoff exercises this right, the **following subclauses of this clause shall apply**.
 - (b) The counterparty guarantees to ThiemeMeulenhoff that even to the extent that rights belong to the CMO, ThiemeMeulenhoff can nonetheless dispose of the delivered goods as if the IP rights in question had been transferred as stipulated in this agreement. The only exceptions to this are those rights which (cumulatively):
 - (i) are and/or can only be exercised collectively; and
 - (ii) which ThiemeMeulenhoff cannot reasonably exercise itself; and
 - (iii) which in general are not exercised by other publishers.
 - (c) To this end, with regard to the rights transferred to the CMO, the counterparty grants ThiemeMeulenhoff a licence which confers upon ThiemeMeulenhoff the same rights and authorities as the transfer described in these terms and conditions and, if this is not possible, the counterparty hereby irrevocably and exclusively authorises ThiemeMeulenhoff to request the CMO in question on their behalf to grant to ThiemeMeulenhoff



adequate rights of use which ThiemeMeulenhoff deems satisfactory. This authority is granted under the suspensive condition that ThiemeMeulenhoff requests the counterparty to grant it.

- (d) The counterparty will specify to ThiemeMeulenhoff at the latter's first request any income relating to the delivered goods which the counterparty receives through the CMO. At ThiemeMeulenhoff's request, the counterparty shall pay to ThiemeMeulenhoff the amounts received by them through the CMO in respect of the goods delivered. ThiemeMeulenhoff may offset against the counterparty's claims on ThiemeMeulenhoff all the amounts due or likely to be due from the counterparty on the basis of **this clause**.

CHAPTER 3 – MOVABLE GOODS

39. Applicability of chapter 3

- (1) This chapter applies to the delivery of movable goods.
- (2) This chapter applies in conjunction with **Chapter 1** and in conjunction with the other chapters, the latter if and insofar as the agreement concerned also relates to the deliveries referred to in those other chapters.

40. Prices

- (1) All provisions in these terms and conditions with regard to remuneration also apply to prices.
- (2) Prices include shipping, assembly and the removal costs of packaging, unless expressly agreed otherwise.

41. Delivery

- (1) Delivery shall take place at the location and in the manner agreed upon or stipulated by ThiemeMeulenhoff.
- (2) The goods to be delivered shall be for the counterparty's risk until such time as they have been delivered to the agreed location and receipt has been taken of them by or on behalf of ThiemeMeulenhoff.
- (3) ThiemeMeulenhoff may postpone a delivery. In this case, the counterparty will properly and separately store the goods concerned, in their packaging, and keep them insured. The reasonable costs associated with this shall be borne by ThiemeMeulenhoff. Before deciding to postpone a delivery, ThiemeMeulenhoff shall be entitled to require a statement of these reasonable costs, which shall be binding upon the counterparty.
- (4) The counterparty shall take back packaging or arrange for its disposal, at their expense, in accordance with the relevant environmental regulations.

42. Inspection and acceptance

- (1) The counterparty will enable ThiemeMeulenhoff to inspect the goods to be delivered to it, or similar goods, prior to delivery.
- (2) If, at the time of delivery, ThiemeMeulenhoff visually detects that the goods to be delivered are damaged, it shall not be required to take receipt of the delivery.
- (3) Without prejudice to ThiemeMeulenhoff's other rights, if the goods to be delivered are not satisfactory, the counterparty will deliver goods that are satisfactory, at their expense. If the counterparty fails to do so within 10 days of being so requested by ThiemeMeulenhoff, ThiemeMeulenhoff may purchase the items concerned elsewhere. In this case, the counterparty shall pay the amount of any possible higher costs incurred by ThiemeMeulenhoff.

**43. Ownership**

- (1) Ownership of the goods shall be transferred at the time of delivery and taking receipt.
- (2) The counterparty guarantees that the delivered goods are not subject to any third party rights which thwart or could thwart their intended use by ThiemeMeulenhoff.

44. Payment

- (1) Payment shall be made within 30 days of acceptance of the delivered goods by ThiemeMeulenhoff.

45. Guarantee

- (1) Without prejudice to ThiemeMeulenhoff's rights under the law or an agreement, the counterparty guarantees to ThiemeMeulenhoff and its successors in title that:
 - (a) The delivered goods meet the agreed specifications;
 - (b) The delivered goods are appropriate to ThiemeMeulenhoff's intended purpose for them;
 - (c) The delivered goods do not constitute a hazard to either ThiemeMeulenhoff and its employees or third parties;
 - (d) The delivered goods possess the characteristics that ThiemeMeulenhoff is entitled to expect.
ThiemeMeulenhoff is entitled to expect that the delivered goods are suitable for normal use and also possess the characteristics necessary for any intended special use;
 - (e) The delivered goods shall retain the characteristics that ThiemeMeulenhoff is entitled to expect for a period of at least the normal useful life for the delivered goods;
 - (f) The delivered goods comply with all the legal requirements;
 - (g) Adequate spare parts and stocks of consumables for the delivered goods are available, and these will be available for the normal useful life of the delivered goods plus one year.

CHAPTER 4 – IT DEVELOPMENT AND IT SERVICES**46. Applicability of chapter 4**

- (1) This chapter applies to IT agreements and, specifically, those relating to IT development.
- (2) This chapter applies in conjunction with **Chapter 1** and in conjunction with the other chapters, the latter if and insofar as the agreement concerned also relates to the deliveries referred to in those other chapters.

47. Specifications

- (1) Parties shall draw up the specifications. The counterparty is responsible for ensuring that these specifications comply with ThiemeMeulenhoff's intended purpose.
- (2) The counterparty shall produce the goods to be delivered in accordance with the specifications.
- (3) The counterparty shall ensure that the goods to be delivered are stable, are expected to be capable of continuing to comply with the intended purpose in the long term, with or without some updates, and that the goods to be delivered can also be easily maintained by third parties.
- (4) The goods to be delivered must, as a minimum, function with the most recent software versions and the versions actually in use at ThiemeMeulenhoff. The goods to be delivered must as a minimum function with all the common browsers that have a market share of more than 3%.

48. Documentation and set-up of the goods to be delivered

- (1) The counterparty shall provide proper documentation of a nature that enables ThiemeMeulenhoff and third parties to use the delivered goods and, if necessary in the event of a transfer of IP rights, to repair defects or have them repaired.



- (2) ThiemeMeulenhoff shall be entitled to have an independent expert investigate whether the documentation complies with the requirements set out in the preceding paragraph. The counterparty shall cooperate with this investigation. If the documentation does not comply materially, the costs of the investigation shall be for the account of the counterparty, without prejudice to the other rights of ThiemeMeulenhoff.

49. Preparation

- (1) The counterparty shall check whether the systems of ThiemeMeulenhoff are compatible with the goods to be delivered and whether the goods to be delivered can comply with the guidelines in place at ThiemeMeulenhoff. ThiemeMeulenhoff shall provide a copy of the relevant guidelines and information about its architecture on request. The counterparty shall confirm to ThiemeMeulenhoff in writing that the goods to be delivered are suitable and can comply with the guidelines.

50. Delivery

- (1) Delivery shall take place by installing the goods to be delivered or by giving access to the goods to be delivered and (in both instances) by issuing the documentation.
- (2) The counterparty shall check immediately upon delivery whether the goods to be delivered are working properly and shall confirm to ThiemeMeulenhoff in writing that this is the case.

51. Source code and frameworks

- (1) Where:
 - (a) the goods to be delivered or the work resulting in any IP right were created or was performed for the benefit of, for the purpose of or under the supervision of ThiemeMeulenhoff; or
 - (b) the counterparty is aware that the goods to be delivered or the result thereof will be used exclusively by ThiemeMeulenhoff;the counterparty shall provide ThiemeMeulenhoff with the source codes and the frameworks for the goods to be delivered, at the time of delivery.
- (2) If the counterparty repairs defects affecting the delivered goods (either under warranty or under a maintenance contract or otherwise), they will supply ThiemeMeulenhoff with the source codes and frameworks for all new versions, as soon as they are available.
- (3) The counterparty guarantees that, with the aid of the source codes, frameworks and documentation, ThiemeMeulenhoff will be able to adequately maintain and update the delivered goods, either itself or with the assistance of a competent third party. ThiemeMeulenhoff shall be entitled to have an independent expert investigate whether the counterparty complies with this guarantee. The counterparty shall cooperate with this investigation. If the independent expert concludes that the counterparty does not comply materially with this guarantee, the costs of the investigation shall be for the account of the counterparty, without prejudice to the other rights of ThiemeMeulenhoff.

52. Acceptance

- (1) If the parties are operating according to an agile method, the acceptance procedure set forth below in **this article** shall not apply. Defects affecting the delivered goods will then be determined in accordance with **Chapter 1**, inter alia in accordance with **Article 10, clause 2**.
- (2) ThiemeMeulenhoff will inform the counterparty within fourteen days of delivery whether it accepts the delivered goods. If ThiemeMeulenhoff requires more time, it may extend that deadline by a reasonable amount of time. The counterparty will, if requested, provide a test for checking the delivered goods. ThiemeMeulenhoff may also use its own test. ThiemeMeulenhoff may also test the delivered goods by subjecting them to full or limited operational use.
- (3) If no communication is received within 30 days of delivery or, if the deadline has been extended, if no further communication is received within 30 days of the expiry of the extended deadline, the delivered goods will be deemed to have been accepted.



- (4) ThiemeMeulenhoff may accept the delivered goods even if it identifies defects. In IT agreements, the failure of the delivered goods to function as described in the specifications constitutes a defect.
- (5) ThiemeMeulenhoff shall notify whether or not it accepts the delivered goods.
- (6) If ThiemeMeulenhoff does not accept the delivered goods and if it accepts the delivered goods on condition that the counterparty repairs the defects, it shall inform the counterparty of that fact and of the defects. Once the defects have been repaired, the acceptance procedure will commence afresh. The day on which the repaired delivered goods are accepted shall be deemed the first day of the warranty period and the day on which ThiemeMeulenhoff's payment term commences.
- (7) ThiemeMeulenhoff may make use of the delivered goods prior to accepting them. In this case, the counterparty will not be liable for damage suffered by ThiemeMeulenhoff as a result of defects affecting the delivered goods, unless those defects would not have been detected by a test supplied by the counterparty.
- (8) ThiemeMeulenhoff shall be obliged only once to allow the counterparty the opportunity to repair defects affecting the delivered goods. It shall be entitled to make a repeat request to the counterparty to repair defects but may also, at its discretion, exercise its authorities under the law or these terms and conditions and, for example, dissolve the agreement.

53. Guarantee: defect repairs

- (1) The provisions of **this article** apply, unless parties make arrangements to the contrary regarding defect repairs and maintenance, for example in an SLA. In the event that the delivered goods were produced using an agile method, "defect repair" shall constitute a, in the opinion of ThiemeMeulenhoff, necessary improvement to the delivered goods. Where reference is made in **this article** to a defect repair, this shall mean both types of defect repair.
- (2) The counterparty has the right to remuneration for defect repair if
 - (a) the delivered goods were produced on a time and material basis (and, in that case, a remuneration calculated in the same manner and at the same rates); or
 - (b) the defect repair was necessitated by improper changes to the delivered goods by third parties or ThiemeMeulenhoff.
- (3) In instances not described in the **preceding clause** the counterparty shall provide defect repair free of charge for a period of 12 months. Thereafter, the counterparty shall repair defects in return for the maintenance fee.
- (4) The counterparty shall repair defects as swiftly as possible. The counterparty shall repair a defect that renders use of the delivered goods virtually impossible within one working day, or will ensure by means of a work around that the delivered goods can be used again within one working day. The counterparty shall repair defects that hinder use within five working days. The counterparty shall repair as swiftly as possible, but at the latest within two months defects which, although they are a hindrance, have few or no negative implications as regards the use of the delivered goods.
- (5) The counterparty shall repair as swiftly as possible any defects detected prior to or at the time of possible acceptance.

54. Maintenance

- (1) For a period of at least three years following acceptance or delivery (if the agile method is used), the counterparty will repair defects affecting the delivered goods in the manner described in the preceding article.
- (2) The remuneration is stated in the agreement and, failing this, the remuneration will be reasonable and customary. In the event of a dispute regarding this remuneration, parties will ask the IT arbitration body Foundation for the Settlement of Automation Disputes, with registered office in Haarlem (www.sgoa.org) to make a binding decision on the amount of the remuneration, in accordance with the foundation's arbitration rules (Deskundigenberichtreglement Stichting Geschillenoplossing Automatisering).

55. Assistance



- (1) The counterparty will, on request, advise ThiemeMeulenhoff on the interaction between the delivered goods and systems or software of third parties.
- (2) The costs of such assistance will be the counterparty's standard rates.

**56. Connections**

- (1) The counterparty is not liable for connections purchased by ThiemeMeulenhoff from third parties, unless the counterparty gave advice on those connections and they are found not to be satisfactory.

57. Use of access codes

- (1) ThiemeMeulenhoff is responsible and liable for the use made of the delivered goods with its access codes, unless the unpermitted use is the result of inadequate security measures by the counterparty. In this case, the counterparty shall be responsible and liable.

58. Third party rights

- (1) If a third party gives notifies the counterparty that, in using the systems of the counterparty, ThiemeMeulenhoff is infringing any right of that third party, the counterparty will notify ThiemeMeulenhoff of this at once.
- (2) ThiemeMeulenhoff will then assess whether to continue using the system on the same basis or whether it will adapt its use of the system. In any event, the counterparty will not block access to their systems. ThiemeMeulenhoff shall indemnify the counterparty against all damages suffered by the latter as a result of any unlawful use of their systems by ThiemeMeulenhoff.

59. SLA

- (1) Parties may agree that the goods to be delivered by the counterparty must meet certain requirements in terms of availability and speed of response.
- (2) The counterparty shall advise on the best requirements for ThiemeMeulenhoff, having regard to the nature of the business and the price of the requirements.

60. Escrow

- (1) At ThiemeMeulenhoff's first request, the counterparty will ensure that, if there is a licence in respect of the delivered goods, the source codes are placed in escrow, providing ThiemeMeulenhoff has agreed to the costs thereof.
- (2) If the costs of the escrow arrangement are unacceptable for ThiemeMeulenhoff, it may itself ask a reputable escrow agent to arrange the escrow of the delivered goods, at ThiemeMeulenhoff's expense. The counterparty shall cooperate with this immediately.

61. Transfer of work to another counterparty

- (1) When an agreement ends, irrespective of the reason for it coming to an end, the counterparty will ensure to the fullest extent possible that a third party is able to take over their deliveries.
- (2) If the counterparty has to incur costs to that end, ThiemeMeulenhoff will reimburse them to a reasonable extent. Only out-of-pocket expenses and expenses at internal cost price of employees whose expenses can be claimed externally are eligible for reimbursement. ThiemeMeulenhoff will not make any reimbursement if the agreement came to an end as a result of an attributable failure on the part of the counterparty.