GENERAL TERMS AND CONDITIONS

OCLC PICA

Note in advance: this is a translation of the Dutch original general terms. An attempt has been made to translate as literal as possible without jeopardising the overall continuity. Inevitably, differences may occur in translation and if so the Dutch text will by law govern.
PART 1. DEFINITIONS AND GENERAL TERMS

Clause 1. Definitions

Acceptance Test: the test or test procedure that can establish that the Software meets the agreed specifications.

Customer: the (legal) person incl. its Employees with whom OCLC PICA concludes an Agreement for OCLC PICA products and/or services.

Corrective Maintenance: the repair of Errors in the Software. Corrective maintenance does not include repairing an Error arising as a result of modifications made by the Customer or third parties in the Software and/or the environment.

Documentation: manuals, instruction material and the like that relate to OCLC PICA’s products and/or services, published by OCLC PICA.

Employees: Persons employed by or working under the authority of Customer or OCLC PICA.

End-users: private members, visitors and Employees of the Customer.

Errors: failure to perform in line with the written functionalities as published by OCLC PICA. An Error shall only be deemed to exist if it can be demonstrated and reproduced.

New Generation Software: a version of the Software based on the latest technology that is delivered to the Customer at times specified by OCLC PICA and that may function in a different environment.

Office hours: Working days (Mondays through Fridays) from 8.30 - 17 hours, with the exception of bank or public holidays in the Netherlands and notified days.

Organisation: the location(s) where Customer is accommodated, including where appropriate, permission to allow access to OCLC PICA services through remote access on condition that remote access will only be possible for End-users after authorisation (for example after typing a user number and password provided by Customer). With remote access is meant: access from another location than that of Customer with or without a specific computer and passsword provided by Customer. With remote access is also meant: access from another location than that of Customer via a network (including the internet) with or without a specific computer and passsword provided by Customer. 

Release: a new version of the Software to be delivered to the Customer at times specified by OCLC PICA and containing no or at any rate only a limited expansion of the functionality (minor release) or a considerable expansion of the functionality (major release).

Software: the software developed by OCLC PICA together with, if applying as a result of modifications made by the Customer or third parties in the Software and/or the environment.

Software of third parties: the Software developed by third party suppliers for which OCLC PICA has received the (non) (exclusive) right to give sub-licenses and which has, where appropriate, been integrated with the software developed by OCLC PICA.

Clause 2. Applicability

The General Terms and Conditions (hereafter: “Conditions”) shall apply to all offers, quotations and Agreements originating from OCLC PICA B.V. (hereinafter: “OCLC PICA”), with its registered office in Leiden, the Netherlands. Deviations from these Conditions shall only be valid if explicitly agreed in writing.

Clause 3. Offer and Agreement

3.1 An Agreement between the Customer and OCLC PICA shall only be concluded once an agreement, quotation or confirmation of assignment has been signed by both Parties (hereafter: “Agreement”).

3.2 No variations to the Agreement (including the Conditions) shall be effective unless it is in writing and duly signed by both parties.

Clause 4. Terms of payment

4.1. Prices are as quoted by OCLC PICA, or, where no prices have been quoted or a quoted price is no longer valid, standard prices apply. All prices are exclusive of VAT and any other levies.

4.2 OCLC PICA is entitled to adjust its rates annually generally in line with the annual price inflation.

4.3 OCLC PICA shall always charge the fee or fees due by the Customer in advance, at the beginning of each calendar year, unless otherwise agreed in writing. In case of connection in the course of a calendar year the tariffs are due pro rata.

4.4 Unless otherwise agreed in writing, payments are at all times due within 30 days of the invoice date. The Customer may not deduct or set-off any amounts from the invoiced amount and may not suspend any payment on account of an alleged or actual failure on the part of OCLC PICA.

4.5 A Customer failing to pay within the agreed term shall be deemed to be in default, without any notice of default being required. Without prejudice to any other rights or remedies of OCLC PICA, the Customer shall be liable to pay statutory interest to OCLC PICA from the due date. In addition, OCLC PICA shall, without prejudice to any of its other rights or remedies, be entitled to suspend performance of the assignment or service immediately.

4.6 In the event of late payment, the Customer shall compensate OCLC PICA for all costs and expenses (including legal fees, court fees, fees of debt-collecting agencies, etc.) incurred by OCLC PICA in collecting or attempting to collect amounts outstanding.

Clause 5. Terms

5.1 The terms of delivery and - if such has been agreed - the term within which implementation or installation shall take place or any other term within which OCLC PICA shall be required to meet obligations, shall be stated to the best of OCLC PICA’s knowledge, but such statement shall never be regarded as an ultimate term, unless explicitly agreed otherwise.

5.2 In the event of late delivery or late performance, the Customer shall be required to notify OCLC PICA in writing, and allow OCLC PICA a reasonable extension of the term of delivery. The Customer shall only be entitled to dissolve the Agreement, insofar as delivery has not yet taken place, if this term is exceeded. OCLC PICA shall not be obliged to pay compensation in such a situation.

Clause 6. Confidentiality

6.1 Each party shall keep all information with respect to the other party and this Agreement, that is reasonably to be considered confidential or is identified as being confidential, confidential, including, but not limited to, all source codes,
Clause 7. Intellectual property

7.1 The ownership of, and all intellectual property rights in, the products, services and Documentation shall at all times vest in OCLC PICA, or in its licensors, as appropriate, unless explicitly agreed otherwise in writing.

7.2 The Customer undertakes only to use the products and services provided by OCLC PICA within its own Organisation only and for the purpose for which these were made available to the Customer. Other than with OCLC PICA’s written permission, the Customer is explicitly forbidden, either on its own or by engaging third parties, to reproduce, disclose or exploit products, including software, databases, procedures, advice and other intellectual products, supplied by OCLC PICA or its suppliers, such in the broadest sense of the word.

7.3 OCLC PICA shall indemnify the Customer against any claims of an alleged infringement of an intellectual or industrial property right in respect of products originating from OCLC PICA, provided the Customer: immediately informs OCLC PICA in writing of a claim, and leaves the handling of the case entirely to OCLC PICA and grants all assistance hereto, and does not make any statements or promises, does not acknowledge any rights or facts without OCLC PICA’s prior written permission.

The indemnity referred to in this Clause shall not apply to Software of third parties.

7.4 The indemnity provided for in this Clause shall not be applicable if the claim is the result of the products being used in combination with other products not originating from OCLC PICA.

7.5 Under no circumstance shall OCLC PICA be subject to further liability in respect of an infringement of any intellectual or industrial property rights other than as specified in this clause.

Clause 8. Support

8.1 If and to the extent available, OCLC PICA shall provide the Customer with customer manuals on how to use its services.

8.2 OCLC PICA shall organise courses on the use of most of its services. The conditions under which these courses are offered are published on the website of OCLC PICA.

8.3 The Customer may submit questions with regard to the use of OCLC PICA’s products and services, using the appropriate means. OCLC PICA shall provide the relevant information on these means. The questions will be dealt with as soon as possible during Office hours by competent Employees of OCLC PICA. In this respect, OCLC PICA assumes that the basic details covered in the courses referred to in 8.2 shall be known to the Customer’s Employees.

8.4 OCLC PICA shall only offer support for using the last but one version of the Software. A transition period to be set per product shall apply to New Generation Software. Information on this will be communicated in time.

8.5 OCLC PICA only offers support to Employees of the Customer and not, therefore, to private members or visitors of the Customer.

Clause 9. Administration and inspection

9.1 If requested, the Customer shall provide OCLC PICA on its first request with an up-to-date list containing the End-users, locations and/or IP-addresses as will be specified by OCLC PICA in order to establish price coding and/or to monitor the circle of End-users.

9.2 OCLC PICA undertakes to use the files referred to in the above Clause for inspection purposes only.

Clause 10 Liability

10.1 OCLC PICA shall only be held liable on account of an attributable failure to fulfill an Agreement if the Customer gives OCLC PICA proper notice of default in writing and without delay, with a reasonable period in which to remedy the failure being granted, and OCLC PICA attributable continues to fail to fulfill its obligations within such period. The description of the failure in the notice of default shall be as detailed as possible, thus allowing OCLC PICA to respond adequately.

10.2 OCLC PICA shall accept no liability vis-à-vis the Customer for any damage other than damage covered in such instance by its indemnity insurance, and insofar as the insurer will pay out in appropriate cases.

10.3 Except as referred to in 10.2, liability shall at all times be limited to the amount charged for the performance causing the damage or, in the case of ongoing performance contracts, to the invoiced amount over a maximum period of six months. Under no circumstance shall the compensation referred to in this clause exceed EUR 500,000.

10.4 OCLC PICA shall never be liable for damage that is the result of:
- the Customer providing incorrect and/or incomplete and/or late data;
- any failure on the part of the Customer to fulfill its obligations, including providing for and adequately assisting performance of the Agreement;
- hardware and/or software supplied by third parties.

The Customer shall indemnify OCLC PICA against any claims by third parties arising as a result of circumstances as referred to in this Clause.

10.5 OCLC PICA shall never be liable for any collateral damage, including consequential damage, lost profits or damage caused by a business standstill.

10.6 OCLC PICA shall not be held liable if it is possible for the Customer to claim against a third party or its insurance company in respect of any damage.

Clause 11. Force majeure

11.1 Neither party shall be obliged to fulfill any obligation if it is prevented from doing so as a result of force majeure. Force majeure shall also include a non-attributable failure on the part of OCLC PICA’s suppliers.

11.2 Each party may terminate the Agreement by written notice to the other party if the force majeure lasts for more than ninety consecutive days. The Customer shall pay any amounts for services performed up to the date of termination. The parties shall have no other obligations to each other, other than as set out in this clause 11.
Clause 12. Term and termination

12.1 The Agreement shall come into force on the date specified in the Agreement and shall stay in force until terminated in accordance with this clause 12.

12.2. The Agreement may be entered into for a fixed or an indefinite period of time.

12.3 If the Agreement is concluded for a fixed period of time, it cannot be terminated prematurely.

12.4 If the Agreement has been entered into for an indefinite period of time, each party may terminate the Agreement by registered letter at the end of a calendar year taking into account the contractual notice period.

12.5 Besides the cases mentioned under 5.2 and 11.2 and without prejudice to any other rights of a party under the Agreement, each party may dissolve the Agreement if the other party fails to fulfil a material obligation under the Agreement after it has been properly notified thereof, in writing and with details of the grounds for termination, and has been granted a reasonable period to remedy the failure.

12.6 The parties shall be authorised to suspend further performance of the Agreement or to dissolve the Agreement in whole or in part with immediate effect and without judicial intervention if:

- the other party is granted a provisional or final suspension of payment, is offered a repayment arrangement by the Customer on the basis of financial circumstances, the Customer becomes insolvent or goes into liquidation, or OCLC PICA has other reasonable grounds to suspect that the Customer will not fulfil its obligations;

- the other party does not fulfil an obligation under the Agreement either properly or on time.

The above shall be notwithstanding any other rights to which the parties may be entitled, including the right to claim full payment and/or compensation.

12.7 Dissolution of the Agreement shall not affect the parties’ rights to enforce with immediate effect the performance of any obligation arising prior to dissolution.

Clause 13. Choice of forum and applicable law

13.1 Dutch law shall apply to all Agreements between OCLC PICA and the Customer to the exclusion of the Vienna Sales Convention (CISG).

13.2 Should any provisions of the Agreement (including the Conditions) be invalid or unenforceable in whole or in part, the other provisions in the Agreement shall not be affected and shall remain in full force.
Clause 1. Applicability
The Conditions as included in Part I shall also apply to the Licensing Agreement, unless specified otherwise in these Licence Terms.

Clause 2. Right of use
2.1 OCLC PICA shall grant the Customer the non-exclusive and non-transferable right to use the Software. The Customer shall not grant sublicences to third parties or provide third parties with copies of the Software in any form whatsoever, even if the relevant third party will only use the Software for the Customer. Without prejudice to the provisions elsewhere in these Conditions, the Customer’s right of use shall only comprise the right to load and operate the Software. The Customer shall comply with all guidelines and instructions with respect to the use of the Software, as published or notified by OCLC PICA from time to time. Software of third parties in particular may only be used according to the guidelines for the use of the Software (developed by OCLC PICA of which the Software of third parties forms an integral part) and in accordance with the licence conditions specified by these third party supplies.

2.2 Unless explicitly otherwise agreed in writing, the Customer shall only be allowed to use the Software within its own Organisation (in the event of an organisational licence) or at the agreed number of workstations. The Customer shall at all times strictly observe the restrictions of use agreed between the parties.

2.3 The Customer is not allowed to make changes in the Software, except with OCLC PICA’s prior written permission.

2.4 The Customer is entitled to make two copies of the Software for back-up purposes or have such copies made. The copy has to contain the same copyright data as the original one.

Clause 3. Delivery, installation and acceptance
3.1 OCLC PICA shall deliver the Software to be supplied to the Customer in accordance with the specifications detailed in writing and - insofar as agreed in writing - install the Software in accordance with the installation procedures used by OCLC PICA.

3.2 Where appropriate, the Parties shall mutually agree on procedures for carrying out the Acceptance Test.

3.3 Immediately after the Acceptance Test has taken place, a report shall be drawn up and signed by the parties. Any defects in the Software, as well as details of whether the Software or parts thereof has or have been accepted or rejected by the Customer, shall be recorded in this report.

3.4 If the Software or all parts thereof are accepted by the Customer, the date on which the relevant report is drawn up and signed shall apply as the Acceptance Date.

3.5 Should the Software or parts thereof be rejected by the Customer because of the Software being proved during the Acceptance Test to contain Errors, OCLC PICA shall repair these Errors as soon as possible free of charge. Should non-reproducible Errors occur, OCLC PICA and the Customer shall make a combined effort to detect their cause. An Acceptance Test within the meaning of Clauses 3.2 and 3.3 shall then be carried out again.

3.6 The Software shall be deemed to be accepted if - owing to factors that should not be for the risk of OCLC PICA – the Acceptance Period exceeds the agreed period, or if none was agreed, 4 weeks.

3.7 Contrary to the provisions of Clause 3.4, the Software shall be deemed to be (partly) accepted once one or more functions of the Software are put into actual use.

3.8 Errors that do not reasonably stand in the way of the Software being productively used in accordance with the agreed specifications shall not constitute grounds for the Customer to refuse to accept the Software or to dissolve the Agreement, notwithstanding OCLC PICA’s obligation to repair such Errors free of charge.

3.9 Should the Software be delivered and tested in stages and/or parts, non-acceptance of a specific stage and/or part shall not prejudice any acceptance of previous stages and/or other parts.

Clause 4. Maintenance
4.1 OCLC PICA shall provide maintenance for the Software delivered. Such maintenance shall only be provided for the most recent Release of the Software released by OCLC PICA. A transitional period to be set per product shall apply to New Generation Software. Information on this will be communicated in time.

4.2 Maintenance means Corrective Maintenance, including the delivery of Releases of the Software.

4.3 The Customer shall be responsible for ensuring that Releases are installed. For New Generation Software, it may be necessary to draw up an implementation plan in joint consultation.

Clause 5. Hardware and/or software of third parties
5.1 OCLC PICA shall not accept any liability for damage resulting from hardware and/or software and/or operating systems and/or data communication systems supplied by third parties.

5.2 OCLC PICA shall not be obliged to carry out Corrective Maintenance nor shall OCLC PICA accept any liability for the proper operation of the Software if problems have been caused by the use of hardware and/or operating systems that do not match OCLC PICA’s system requirements.

Clause 6. Consequences of terminating the Agreement
In the event of the Agreement being terminated, the Customer shall remove the Software from the computer system within 30 days of the termination. The Customer shall destroy the Software, including any back-ups made, after termination of the Agreement. OCLC PICA shall at all times be entitled to check whether this obligation has been fulfilled, during which inspection the Customer shall grant all necessary assistance.
PART III GENERAL TERMS AND CONDITIONS PROVISION OF DATABASES

Clause 1. Applicability
The Conditions as included in Part I shall also apply to these General Terms and Conditions, unless specified otherwise in these General Terms and Conditions.

Clause 2. Right to use Database
2.1 OCLC PICA shall grant the Customer a non-exclusive, non-transferable licence to access and use the database or databases (hereinafter referred to jointly as “the Database”) and the Documentation within its own Organisation for purposes specified in product descriptions. Except as and only to the extent expressly permitted in the Agreement or by applicable law, the Customer is explicitly forbidden, either on its own or by engaging third parties, to copy, reproduce, disclose, modify, exploit or make available in any way, the Database or the Documentation, or any part thereof.

2.2. The Customer shall comply with all standards, guidelines and instructions with respect to the use of the Database and the Documentation, as published or notified by OCLC PICA from time to time.

2.3. The Customer shall only provide access to the Database or the Documentation to its Employees. The Customer shall take all reasonable technical and organisational measures required to prevent any other persons or third parties from gaining access to the Database (including its content) or the Documentation.

2.4. OCLC PICA gives no warranty on the availability of the Database or any part thereof. The Database shall in any event not be available during planned downtime.

2.5 Nothing in the Agreement shall give the Customer any right to the Database or the Documentation, other than expressly stated therein.

2.6 The Customer shall hold OCLC PICA harmless and fully indemnified against any damage or loss arising out of third party claims with respect to the unlawful use of the Database or any part thereof, other than in accordance with the Agreement.

Clause 3. Database
3.1 The Customer shall comply with all standards, guidelines and instructions with respect to the entry, disclosure or transfer of data in the Database, as published or notified by OCLC PICA from time to time. The Customer shall, at all times, comply with any data protection legislation applicable to the use of the data.

3.2 OCLC PICA shall use its reasonable endeavours to keep the Database complete, accurate and up-to-date. OCLC PICA does however not warrant that the data in the Database are complete, accurate or up-to-date.

3.3. OCLC PICA shall use its reasonable endeavours to protect the Database from damage to or destruction of data files.

Clause 4. Databases of third parties
4.1 OCLC PICA shall not accept any responsibility for the contents and quality of files in databases provided by third parties.

4.2. If the Database is provided by third parties, OCLC PICA shall observe the terms and conditions of these third parties and shall ensure that these apply to the Agreement between OCLC PICA and the Customer. Third parties may, for example, oblige OCLC PICA to make the Database available to specific target groups only, to adjust the rates or to stop access to a Database. And then doing so, OCLC PICA shall make every effort to notify its users in good time of any conditions and modifications and to allow a reasonable period of notice.

4.3. Should royalties be due in return for the use of the third parties’ Database, OCLC PICA shall either charge the cost of such royalty payments to the Customer or, where appropriate, the Customer shall register in writing with the third party, after which the royalties shall be paid directly to the third party.

Clause 5. User numbers and passwords
5.1 The Customer will as soon as possible after conclusion of the Agreement be assigned one or more user numbers and passwords to access the Database. User numbers and password are administrated by OCLC PICA. OCLC PICA is entitled to change user numbers and passwords, giving notice to Customer.

5.2 User numbers and passwords shall be kept confidential. OCLC PICA and the Customer shall take all reasonable measures to prevent any unauthorised access to or use of the user numbers and passwords provided to the Customer.

5.3 Should OCLC PICA discover or have reason to suspect that an unauthorised third party is making use or can make use of the user numbers and passwords, or should the Customer notify OCLC PICA of such use by telephone, in writing or otherwise, OCLC PICA shall immediately block access to the Database by the specific user numbers and passwords. After these have been blocked, OCLC PICA shall provide the Customer as soon as possible with replacement user numbers and passwords.

5.4 If any unauthorised use of the user numbers and passwords is attributed to the Customer, the Customer shall pay OCLC PICA a reasonable administrative fee to cover the costs of the blocking and replacing the user numbers and passwords, as well as the costs of the unauthorised use.
Clause 1. Applicability
The Conditions as included in Parts I and III shall also apply to these Terms and Conditions, unless specified otherwise in these Terms and Conditions.

Clause 2. Scope
2.1 OCLC PICA shall grant the Customer the non-exclusive right to make the Database public to End-users within its own Organisation.
2.2 Any reproduction and/or disclosure by the Customer to parties other than End-users shall only be allowed with OCLC PICA's prior written permission.
2.3 The Customer shall only be entitled to make the Database available to End-users for their personal use.
2.4 OCLC PICA shall be entitled to set contractual limitations on the circle of End-users.

Clause 3. Obligations on the part of the Customer
3.1 The Customer may provide the Database to End-users on the condition that such End-users undertake to observe the restriction on use referred to in Clause 2.3 and set by OCLC PICA.
3.2 Apart from that, the Customer shall also guarantee OCLC PICA that all End-users granted access to the Database by the Customer shall comply with the provisions of this Agreement, insofar as these are applicable to such End-users.
3.3 The Customer shall inform OCLC PICA forthwith:
   a. of any form of reproduction and/or disclosure of the Database by one or more of its End-users or third parties;
   b. if an End-user has access to a Database that is not designed for End-users and are consequently outside the scope of this Agreement;
   c. if third parties gain or seek to gain unauthorised access to the Database.
In the cases referred to in a and b, the Customer shall immediately discontinue providing the Database to the relevant End-user at OCLC PICA's first request.