



## CIRCULAR IQ Terms of Service

These terms and conditions of service ("**Terms**") are applicable to and to be understood as to become an integral part of any ordering document (an offer, statement or quote) made by and between Circular IQ BV., with its principal place of business at Plantage Middenlaan 62, 1018 DH Amsterdam, the Netherlands ("**Circular IQ**") and its customer as indicated during the account selection process at <https://ctitool.com> ("**Company**"). The account selection is considered and ordering document. Its relevant attachments together with these Terms shall constitute the "**Agreement**" between Circular IQ and Company.

### 1. Offer and Agreement

- 1.1 All offers and other statements by Circular IQ shall be without obligation, unless Circular IQ expressly indicates otherwise in writing.
- 1.2 Company warrants the accuracy and completeness of the data on which Circular IQ bases its offer and which have been stated by or on behalf of Company to Circular IQ.
- 1.3 If any provision of the Agreement is null and void or annulled, the remaining provisions of the Agreement shall remain in full force.
- 1.4 In case the ordering document and these Terms differ, the wording on the ordering document shall prevail.

### 2. Price and payment

- 2.1 Prices are exclusive of turnover tax (VAT) and other levies imposed by the government.
- 2.2 Prices shall be fixed for the period specified in the Agreement. Upon expiration of this period, unless agreed otherwise in writing, Circular IQ shall be entitled to adjust the applicable prices and rates by providing written notice at least three months in advance. If Company does not wish to agree to such an adjustment, Company shall, within thirty days after the notice, be entitled to terminate the Agreement before the date on which the adjustment would have become effective.
- 2.3 Company shall pay invoices in accordance with the payment conditions stated on the invoice. In the absence of a specific provision, Company shall pay within thirty days after the invoice date. Company shall not be entitled to set off or to suspend a payment.
- 2.4 If Circular IQ for any reason anticipates that Company may not be able to comply with its payment obligations, or in the event that the credit insurance obtained by Circular IQ no longer covers the risk of such non-compliance, then Circular IQ shall have the right to reject or suspend the performance of all the Agreement which are likely to be affected by Company's non-compliance until such time that Company has provided adequate additional payment security in a form reasonably acceptable to Circular IQ.
- 2.5 All licenses and other rights granted to Company by Circular IQ have been granted under the condition precedent that all amounts owed by Company under the Agreement, as well as all other amounts which Company owes to Circular IQ due to a breach of its payment obligations, have been paid fully to Circular IQ.
- 2.6 The price payable by Company shall be due with immediate effect if Company:
  - a) becomes insolvent or is unable to pay its debts as they fall due; or
  - b) seeks to be declared bankrupt; or

- c) is granted suspension of payments or similar relief under a legal procedure;
- d) is subject to such a procedure; or
- e) the Agreement is terminated for any reason.

### **3. Cooperation by Company**

3.1 Company shall always furnish Circular IQ in a timely manner with all data or information which is useful and necessary to execute the Agreement properly and provide full cooperation. If Company utilizes its own employees in cooperating in the execution of the Agreement, these employees shall possess the necessary know how, experience, abilities and characteristics.

3.2 Company shall bear the risk of selecting, using and applying in its organization the software, websites, databases and other products and materials and the services to be provided by Circular IQ.

3.3 If Company does not provide Circular IQ with the data, information or employees necessary to execute the Agreement, or does not provide this in a timely manner or in accordance with the agreements made, or if the Company otherwise does not fulfil its obligations, Circular IQ shall be entitled to suspend execution of the Agreement in whole or in part, and it shall be entitled to charge the ensuing expenses in accordance with its usual rates, all of this without prejudice to the Circular IQ's right to exercise any other legal right.

3.4 In the event that employees of Circular IQ perform work on-site at Company's premises, Company shall provide the facilities reasonably desired by those employees free of charge, such as a working space with computer and telecommunications facilities. The working space and facilities shall comply with all applicable statutory and other requirements and provisions concerning working conditions. Company shall indemnify Circular IQ against claims by third parties, including Circular IQ's employees, who, in executing the Agreement, suffer injury which is the result of acts or omissions by Company or of unsafe situations in its organization. Company shall provide timely notice to Circular IQ's employees to be utilized of the company and security rules applicable within its organization.

### **4. Delivery periods**

4. All delivery and other periods stated or agreed by Circular IQ have, to the best of its knowledge, been determined based on data known to Circular IQ when it entered into the Agreement. Circular IQ shall properly exert commercially reasonable efforts to observe agreed delivery and other periods. The mere fact that a stated or agreed delivery or other period has been exceeded shall not cause Circular IQ to be in default. In all cases, hence, even if the Parties have expressly agreed on a firm date in writing, Circular IQ shall not be in default because of a time period being exceeded until Company has provided it with a written notice of default. Circular IQ shall not be bound by firm or non-firm delivery or other periods which can no longer be met on account of circumstances beyond its control which have occurred after the Agreement was concluded. Nor shall Circular IQ be bound by firm or non-firm delivery periods if the Parties have agreed to modify the substance or scope of the Agreement (additional work, change in specifications etc.). If any period threatens to be exceeded, Circular IQ and Company shall consult with each other as soon as possible.

### **5. Performance guarantee of Circular IQ for services in general**

5.1 Circular IQ shall perform the services with due care and, where appropriate, in accordance with the agreements and procedures set out in writing with Company. All of Circular IQ's services shall be performed on the basis of a commercially reasonable efforts obligation, unless and insofar as Circular IQ has expressly promised a result in the Agreement and the result concerned has also been described with sufficient definiteness. Any agreements concerning a service level must always be expressly agreed in writing.

5.2 If it has been agreed that the services shall be provided in stages, Circular IQ shall be entitled to postpone the start of the services which are part of a stage until Company has approved the results of the preceding stage in writing.

## **6. Modification and additional work**

6.1 If, at the request of or with prior consent from Company, Circular IQ has performed work or rendered other performance which goes beyond the substance or scope of the agreed services, Company shall pay for that work or performance according to Circular IQ's usual rates. Circular IQ shall never be obliged to satisfy such a request, and it may require that a separate written agreement be concluded.

6.2 Company accepts that work or performance as referred to in Article 6.1 may affect the agreed or expected time of completion of the services and the mutual responsibilities of Company and Circular IQ.

The fact that additional work (or the demand for it) arises during execution of the Agreement shall never be a ground for Company to rescind or terminate the Agreement.

6.3 Insofar as a set price has been agreed for the services, Circular IQ shall, upon request, inform Company in writing in advance about the financial consequences of the extra work or performance.

## **7. Study programs, courses and training sessions**

7.1 Insofar as the services by Circular IQ consist of providing a study program, course or training session, Circular IQ may always demand payment of the amount owed before it begins to provide these services. The consequences of cancellation of participation in the study program, course or training session shall be as set out in the Agreement.

7.2 If the number of registrations justifies doing so in Circular IQ's judgment, Circular IQ shall be entitled to combine the study program, course or training session with one or more other study programs, courses or training sessions, or to have them take place at a later date or a later time.

## **8. Development and/or configuration of software**

8.1 If specifications for or a design of the software to be developed and/or configured were not already given to Circular IQ when the Agreement was concluded, the Parties shall in consultation specify in writing which software shall be developed and/or configured and in which manner this shall occur. Circular IQ shall develop and/or configure the software with due care based on data to be provided by Company, that warrants the correctness, completeness and consistency.

8.2 Circular IQ shall be entitled, but not required, to examine the correctness, completeness or consistency of the data, specifications or designs given to it and, if any imperfections are discovered, to suspend the agreed work until Company has eliminated the imperfections concerned.

### **Acceptance of software**

9.1 If an acceptance test has been agreed, the test period shall be 14 days after Circular IQ has provided Company with a written notification that the software is ready for acceptance testing. Company shall not be allowed to use the software for productive or operational purposes during the test period. Circular IQ may always require, hence, even if this has not been expressly agreed, that Company conducts a proper test of sufficient scope and depth using sufficiently qualified employees as to interim or other results of the development and/or configuration work and that the test results be reported to Circular IQ in writing and in a well-organized and comprehensible manner.

9.2 The software shall be considered accepted by the Parties:

- a. If an acceptance test has been agreed between the Parties: at the time of Company's first access to the CTI Tool software, or;
- b. if an acceptance test has been agreed between the Parties: on the first day after the test period, or;

c. if the Circular IQ receives a test report as referred to in Article 9.4 before the end of the test period: at the time that the errors mentioned in that test report have been fixed, notwithstanding the existence of imperfections which do not preclude acceptance under Article 9.5. In deviation from this, if Company makes any use of the software for productive or operational purposes before express acceptance, the software shall be considered fully accepted as from the start of that use.

9.3 If, when the agreed acceptance test is conducted, it turns out that the software contains errors which impede the progress of the acceptance test, Company shall provide written, detailed notice to Circular IQ, in which case the test period shall be interrupted until the software has been adjusted in such a manner that this impediment is eliminated.

9.4 If, when the agreed acceptance test is conducted, it turns out that the software contains errors, Company shall inform Circular IQ about the errors through a written and detailed test report no later than on the last day of the test period. Circular IQ shall use commercially reasonable efforts to fix the aforementioned errors within a reasonable time period, with Circular IQ being entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the software.

9.5 Acceptance of the software may not be withheld on other grounds besides those relating to the expressly agreed specifications between the Parties nor because of the existence of minor errors, that is, errors which do not reasonably preclude putting the software to operational or productive use, notwithstanding the Circular IQ's obligation to fix these minor errors. In addition, acceptance may not be withheld with regard to aspects of the software which can only be evaluated subjectively, such as the design of the user interfaces.

9.6 Acceptance of the software in one of the ways referred to in Article 9.2 shall have the effect that Circular IQ is fully discharged for performing its obligations concerning developing and/or configuring the software.

## 10. Provision of SaaS

10.1 In the event that Circular IQ provides SaaS (which means 'a service by which Circular IQ makes software available to Company remotely through the Internet or another data network, and maintains this availability remotely, without providing a physical carrier with the software concerned to Company'), Circular IQ shall grant Company a personal, non-exclusive and non-transferable license for Authorized Users to remotely access and use the software during the term of the Agreement, solely for Internal Business Purposes (defined hereinafter). For the purpose of this Article 10.1:

- **Authorized Users** shall mean: such employees of Company and its sub-tier suppliers as are authorized by Company to access and use the software; and

- **Internal Business Purposes** shall mean: Company's own business activities.

10.2 The right of the Authorized Users to remotely access and use the software shall be subject to a end-user license agreement, prior to being able to access and use the software. Authorized Users shall be obliged to accept such end- user license terms and conditions before any access is allowed.

10.3 A high speed Internet connection is required for proper provision of the SaaS. Company is responsible for procuring and maintaining the network connections that connect its network to the SaaS, including, but not limited to, "browser" software that supports protocols used by Circular IQ, and to follow procedures for accessing services that support such protocols. Circular IQ is not responsible for notifying Company of any upgrades, fixes or enhancements to any such software or for any compromise of data, transmitted across computer networks or telecommunications facilities (including but not limited to the Internet) which are not owned, operated or controlled by Circular IQ. Circular IQ assumes no responsibility for the reliability or performance of connections as described in this Article 10.3.

10.4 Except as otherwise expressly set forth in the Agreement, Company agrees that: (i) it will not, without the prior written consent of Circular IQ, directly or indirectly (a) transfer, assign, lease, loan, resell for profit, distribute or otherwise grant any rights in the software in any form to any third party; or (b) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the software; (c) copy, modify, translate, or create derivative works based on the software; or (d) remove or alter any notice on or in the software.

10.5 Company is solely responsible for the administration, authorization and termination of all unique user identifications and passwords to access and use the software by Company and its Authorized Users. Company shall provide Circular IQ with accurate, complete and updated registration information of its Authorized Users. Company shall be solely responsible for the security of its access to the software and the security of each Authorized User's identification(s) and password(s). Company shall not permit Authorized Users to share user identifications and passwords with any third party.

10.6 Circular IQ may change the content or scope of the SaaS delivery model. If such changes result in a change in Company's current procedures, Circular IQ shall inform Company about the matter as soon as possible and the costs of this change shall be borne by Company. Company may in this case give notice of termination of the Agreement, which termination shall then take effect on the date on which the change takes effect, unless the change is related to changes in relevant legislation or other instructions issued by competent bodies, or Circular IQ bears the costs of a change.

10.7 Circular IQ may continue to provide SaaS using a new or modified version of the software. Circular IQ is not obliged to maintain, modify or add certain features or functionalities of the service or software specifically for Company.

10.8 Circular IQ reserves the right, in its reasonable discretion, to temporarily suspend Company's and/or its Authorized Users' access to and use of the software made available through the SaaS: (a) during planned downtime for upgrades and maintenance to the SaaS (of which Circular IQ will use commercially reasonable efforts to notify Company in advance ("Planned Downtime")); (b) during any unavailability caused by circumstances beyond Circular IQ's reasonable control, such as, but not limited to, acts of God, acts of government, acts of terror or civil unrest, technical failures beyond Circular IQ's reasonable control (including, without limitation, inability to access the Internet), or acts undertaken by third parties, including without limitation, distributed denial of service attacks;

or (c) if Circular IQ suspects or detects any malicious software connected to the software or use of the SaaS by Company or its Authorized Users.

10.9 Unless otherwise agreed in the Agreement, Company shall be solely responsible for making timely back-ups of the data entered into, processed by or generated through the software. Where it has been explicitly agreed that Circular IQ shall make back-ups, Circular IQ shall make a complete backup of Company's data in accordance with the periods agreed in writing or once a week if such periods have not been agreed. Circular IQ shall retain the backup for the duration of the agreed term. Circular IQ shall retain the backup with due care. Notwithstanding the foregoing, Company remains responsible for the fulfilment of all administrative and retention obligations that apply to it by law.

10.10 Company shall be solely responsible for the content of any and all data transmitted through the software. Company shall not use the software and Circular IQ's or its third party provider's systems in a manner that: (i) monopolizes the software and/or such systems in an unreasonable or disproportional manner; (ii) hinders the proper operation of the software and/or such systems; (iii) infringes any intellectual property or other third party right; or (iv) violates applicable law. Company shall defend and, at Company's sole option, settle any claim based on or resulting from Company's breach of any of its obligations under this Article 10.10, and Company will pay any costs and damages awarded against Circular IQ or its third party provider(s) or settlement with respect to such claim, provided that Circular IQ (i) notifies Company promptly in writing of any such claim or proceeding, (ii) gives Company full and complete authority, information and assistance to defend such claim, and (iii) gives Company control of the defense and settlement of any such claim.

## 11. Data

11.1 Data provided to Circular IQ or submitted to, posted in and stored within the SaaS by Company and/or its Authorized Users ("**Company Data**") shall at all times remain property of Company. Circular IQ will maintain commercially reasonable administrative, physical and technical safeguards to protect the security, confidentiality and integrity of Company Data. Notwithstanding the above, however, Company shall be responsible to identify and list the security, confidentiality and integrity risks to its organization and take additional measures if necessary. Circular IQ declares that it is prepared to provide assistance, at Company's request, to the extent reasonable and according to the

financial and other conditions set by Circular IQ, with respect to further measures to be taken by Company. Circular IQ is never obliged to recover data that has been corrupted or lost.

11.2 Company agrees that Circular IQ and the service providers that it utilizes to assist in providing the SaaS to Company shall have the right to access Company's account and to use, modify, reproduce, distribute, display and disclose Company Data to the extent necessary to provide the SaaS, including, without limitation, in response to Company's support requests. Any third party service providers Circular IQ utilizes will only be given access to Company's account and Company Data as is reasonably necessary to provide the SaaS and will be subject to (a) confidentiality obligations which are commercially reasonable and substantially consistent with the standards described in Article 14 and (b) their agreement to comply with the data transfer restrictions applicable to Personal Data as set forth in this article.

11.3 In addition to Company Data, Circular IQ collects certain information which may include data that may directly or indirectly identify an individual ("**Personal Data**") about Company and its Authorized Users as well as Company's and its Authorized User's respective devices, computers and use of the SaaS. Company agrees that Circular IQ shall have the right to use Company Data and Personal Data in order to improve its products and services, to develop new products and services, and for benchmarking, reporting and data analysis or statistical purposes, provided that in the course of such use, Circular IQ shall not disclose to any third party any Company Confidential Information.

11.4 To the extent that Company Data contains any Personal Data the following applies in addition. Company shall warrant that any Personal Data provided to Circular IQ is valid and accurate and legitimately obtained from the data subject when provided to Circular IQ (whether directly or through its software). Company shall inform the data subjects on the use of Personal Data by Circular IQ for the execution of the Agreement. Circular IQ shall only process Personal Data on the basis of and to the extent necessary to execute the Agreement and for its legitimate business purposes. This may refer to contact information between parties, to the user information for the SaaS service or for the use as mentioned in Article 11.1 -11.3. Circular IQ shall not use any Personal Data for any other purpose than beforementioned, and any third parties that has access to Company or Personal Data shall be bound by no less stringent conditions as set forth in this Article. All Company Data is stored within the European Union and Personal Data accessible for Circular IQ shall be deleted within one year after termination of the Agreement.

Circular IQ shall provide its reasonable assistance in case a data subject wishes to invoke its data subject rights under the relevant legislation. Any corresponding costs shall be borne by Company. In case Circular IQ uses Company Data according to 11.4, Circular IQ ensures to anonymize any Personal Data and only use Company Data on an aggregate level, to the extent this is possible.

## **12. Guarantee for SaaS services**

12.1 Circular IQ warrants that it shall use commercially reasonable efforts to perform the SaaS in a professional manner, and, where applicable, in accordance with the service levels agreed upon between Circular IQ and Company in a specific service level agreement.

12.2 Except for the express warranties set out in Article 12.1, the SaaS is provided on an 'as is' basis and Company's use of the SaaS is at its own risk. Circular IQ and its third-party providers do not make, and hereby disclaim, any and all other expressed and/or implied warranties. In particular, Circular IQ and its third-party providers do not warrant that the SaaS will be uninterrupted, secure or error-free and that all software defects can be remedied. Also, Circular IQ does not guarantee that the software made available and held in the context of the SaaS shall be adapted to changes in relevant legislation and regulations on time. If Circular IQ performs work relating to the software, or to the data of Company, its employees or users, pursuant to a request or a competently issued order of a government agency or in connection with a legal obligation, all costs associated with this work shall be charged to Company.

### **13. Confidentiality**

13.1 For the purpose of this Article 13.1, Confidential Information shall mean any information (i) that is designated by the disclosing Party as "confidential" or "proprietary" or (ii), if orally disclosed, is identified by the disclosing Party as confidential or proprietary prior to disclosure and is subsequently reduced to writing and marked by the disclosing Party as "confidential" within fifteen (15) business days of such disclosure, (iii) Personal Data, or (iv) the confidential nature of which is reasonably apparent. Notwithstanding the foregoing, information disclosed by the disclosing Party pursuant to the Agreement shall not be Confidential Information to the extent that it can be proven that the information:

- a) is in or enters the public domain other than through the fault or negligence of the receiving Party and without breach of the Agreement;
- b) is in the possession of the receiving Party prior to receiving it from the disclosing Party other than as a result of the receiving Party's breach of any legal obligation or a prior confidential disclosure by the disclosing Party;
- c) is obtained by the receiving Party from a third party without restriction on disclosure and which is under no obligation of confidentiality (either direct or indirect) to the disclosing Party which respect to such Confidential Information; or
- d) is developed by the receiving Party completely independently of and without use of any such disclosure by the disclosing Party.

13.2 All Confidential Information disclosed or transferred by either Party to the other shall remain the property of the disclosing Party. Except as otherwise expressly set forth in this Agreement, the receiving Party acknowledges and agrees that it does not, by implication or otherwise, acquire any intellectual property rights, title or ownership with respect to any Confidential Information disclosed by the disclosing Party hereunder.

13.3 The receiving Party shall procure that any of its employees and representatives, during the term of the Agreement and a period of five (5) years thereafter:

- a) not use the Confidential Information for any purpose other than the performance of the Agreement;
- b) maintain in confidence the Confidential Information, except that the receiving Party may disclose, solely to affect the performance of the Agreement, the Confidential Information to (with the disclosing Party's prior written consent) its agents and consultants, all of whom must have a need to know.

The receiving Party agrees to use the same degree of care to maintain the confidentiality of all Confidential Information received from the disclosing Party that it uses to maintain the confidentiality of its own information of similar importance, but in no event will it use less than reasonable care.

13.4 If a receiving Party is required, pursuant to administrative or judicial action or subpoena, to disclose the other's Confidential Information, the receiving Party shall use reasonable efforts to maintain the confidentiality of the Confidential Information, e.g. by asserting in such action any applicable privileges. Immediately after gaining knowledge or receiving notice of such action or subpoena, the receiving Party shall notify the disclosing Party thereof and give the disclosing Party the opportunity to seek any other legal remedies so as to maintain such Confidential Information in confidence, including a reasonable protective order.

### **14. Intellectual or industrial property rights**

14.1 All intellectual and industrial property rights to software, websites, databases, or other deliverables developed or provided under the Agreement (the "**Deliverables**"), such as analyses, designs, configurations, documentation, reports, offers, as well as preparatory materials in that regard, shall be held solely by Circular IQ, its licensors or its Circular IQs. Company shall only acquire the rights of use expressly granted in the Agreement. Company's rights of use shall be non-exclusive and non-transferable to third parties.

14.2 Circular IQ shall be allowed to take technical measures to protect any Deliverable made available to Company or with a view to agreed restrictions in the duration of the right to use the software. Company shall not be allowed to remove or evade such a technical measure.

14.3 If any claim is brought against Company alleging that the use of any Deliverable infringes intellectual property or industrial property rights of any third party, Company shall provide Circular IQ with full details of such claim as soon as reasonably practicable and Circular IQ shall defend, or at its option, settle the dispute and, subject to the limitations set forth in Article 16, Circular IQ shall pay the damages irrevocably awarded to such third party or agreed by Circular IQ with such third party. Notwithstanding the above, if at any time after notice to Circular IQ of any such claim the use of such Deliverables is enjoined, Circular IQ shall: (i) procure for Company the right to continue using such Deliverables on terms reasonably acceptable to Company; or (ii) modify the Deliverables so that they become non-infringing; or (iii) replace the Deliverables no additional charge with non-infringing products acceptable to Company. If none of the remedies under (i) to (iii) would be reasonably available to Circular IQ, Circular IQ shall have the right to terminate the licenses granted hereunder without any further liability. Circular IQ shall have no obligation under this Article 14.3 if the alleged infringement concerns (i) materials made available to Circular IQ by Company for use, modification, processing or maintenance or (ii) changes made or commissioned by Company in the Deliverables without Circular IQ's written permission. The foregoing constitutes Circular IQ's sole obligations and Company's sole remedies in the event of an infringement of any third party's intellectual or industrial property rights. Any further liability is explicitly excluded.

14.4 Company shall be invited to participate in evaluations, presentations, meetings, surveys or discussions for the purpose of informing Company of Circular IQ's business and technology direction, and to allow Company, at its sole discretion, to provide Circular IQ with input, comments or suggestions regarding Circular IQ's business and technology direction and/or the possible creation, modification, correction, improvement or enhancement of the products and/or services of Circular IQ, (collectively "**Feedback**"). Company grants to Circular IQ a non-exclusive, perpetual, irrevocable, worldwide, transferable, royalty-free license, with the right to sublicense, under all relevant Company's intellectual property rights, to use, publish, disclose, perform, copy, make, have made, use, modify, create derivative works, distribute, sell, offer for sale and otherwise benefit from Feedback in any manner and via any media.

## **15. Circular IQ's liability; indemnity**

15.1 Circular IQ's total liability for imputably failing to perform the Agreement shall be limited to compensating direct damage, up to at most 25 % of the amount of the price (exclusive of VAT) actually paid for by Company for that Agreement. If the Agreement is primarily a continuing performance agreement with a term exceeding one year, the price actually paid for by Company for the Agreement shall be set at 25 % the total of the fees (exclusive of VAT) paid for by Company for one year. "**Direct damage**" shall solely mean:

- a. reasonable expenses which Company would have to incur to make Circular IQ's performance conform to the Agreement; this alternative damage shall not be compensated, however, if the Agreement is rescinded by or at the suit of Company;
- b. reasonable expenses incurred to determine the cause and scope of the damage, insofar as the determination relates to direct damage within the meaning of the Agreement;
- c. reasonable expenses incurred to prevent or mitigate damage, insofar as the Company demonstrates that these expenses resulted in mitigation of direct damage within the meaning of the Agreement.

15.2 Circular IQ's liability for injury or damage through death or bodily injury or because of material damage to objects shall per event be limited to the amount actually paid in relation to such event by Circular IQ's insurance company.

15.3 Circular IQ's liability for consequential damage, consequential loss, lost profits, lost savings, loss of goodwill, damage through business interruptions, damage ensuing from claims by the Company, Company's, mutilation or loss of data, damage relating to the use of objects, materials or software of third parties prescribed by Company for Circular IQ, damage relating to engagement of Circular IQs prescribed by Company for Circular IQ and all other forms of damage or injury besides those mentioned in Article



15.1 and 15.2, on any account whatsoever, shall be excluded.

15.4 The limitations mentioned in the preceding paragraphs of this Article 15 shall not apply if and insofar as the damage or injury is the result of intentional acts or omissions or gross negligence by Circular IQ or its managers and only to the extent permitted by law.

15.5 Circular IQ's liability because of an imputable failure to perform an Agreement shall in all cases only arise if Company immediately and properly provides a written notice of default to Circular IQ, with a reasonable time period for remedying the failure being given and Circular IQ still imputably failing to perform its obligations after that period as well. The notice of default must contain a description of the breach, which is as complete and specific as possible, so that Circular IQ can respond adequately.

15.6 For any right to damages to exist, Company must always report the damage or injury to Circular IQ in writing as soon as possible after it occurs. Any claim to damages against Circular IQ shall be extinguished by the mere lapse of 24 months after the claim arises.

15.7 The provisions of this Article 15 shall also apply for the benefit of all legal and natural persons utilized by Circular IQ in executing the Agreement.

## **16. Force Majeure**

16.1 A Party shall not be obliged to perform any obligation if it is prevented from doing so by a situation of force majeure. "Force majeure" shall also include a situation of improper performance of obligations by Circular IQs prescribed by Company for Circular IQ, as well as power failures, internet, data network or telecommunication facilities failures, and defects in objects, materials or software of third parties which Company has required Circular IQ to use.

16.2 If a situation of Force Majeure lasts for more than 60 days, the Parties shall be entitled to terminate the Agreement by rescinding it in writing. What has already been performed pursuant to the Agreement shall in that case be settled proportionately, without the Parties otherwise owing each other anything.

## **17. Term and termination of the Agreement**

17.1 The Agreement shall be concluded for the term specified therein. Upon expiration of such term, the Agreement shall be tacitly renewed for the same term, unless a party has provided the other party with a written notification of its intention to terminate the Agreement 30 days prior to termination of any term.

17.2 Company may terminate the Agreement taking in account a 30 days prior written notice.

17.3 Each of the Parties shall only be entitled to rescind the Agreement if the other Party imputably fails to perform material obligations under the Agreement - in all cases, after having received a proper written notice of default which is as detailed as possible and in which it has been given a reasonable time period to remedy the breach.

17.4 Each of the Parties may partly or completely terminate the Agreement in writing with immediate effect and without a notice of default if the other Party is granted a provisional or non-provisional suspension of payments, if a petition for liquidation is filed with regard to the other Party or if the other Party's business is wound up or terminated for other reasons besides a business reconstruction or merger. Circular IQ shall never be obliged on account of this termination to refund funds already received or to pay damages.

In the event of Company's liquidation, the right to use software provided to Company shall be extinguished by law.

17.5 If, at the time of the rescission referred to in Article 17.2, Company has already received performance in connection with execution of the Agreement, this performance and the related payment obligation shall not be cancelled, unless Company proves that Circular IQ is in default with regard to that performance. Amounts which Circular IQ has invoiced before the rescission in connection with what it has already properly performed or delivered to execute the Agreement shall, subject to the provisions in the preceding sentence, continue to be owed in full and shall be immediately payable at the time of rescission.

## **18. Applicable law and disputes**

18.1 Dutch law shall govern the Agreement between Circular IQ and Company. The Vienna Sales Convention of 1980 shall not apply.

18.2 Disputes arising between Circular IQ and Company in connection with an Agreement concluded between Circular IQ and Company or in connection with further agreements which arise under this Agreement, shall be settled through arbitration in accordance with the Arbitration Regulations of the Foundation for the Settlement of Automation Disputes in Haarlem, the Netherlands, all of this without prejudice to the Parties' right to request relief in interlocutory arbitration proceedings and without prejudice to the Parties' right to take protective pre-judgment measures.

18.3 In order to attempt to achieve an amicable resolution of an existing or potential future dispute, either Party may always initiate IT mediation pursuant to the IT Mediation Regulations of the Foundation for the Settlement of Automation Disputes in Haarlem, the Netherlands. IT mediation pursuant to these Regulations shall be based on mediation by one or more mediators. This procedure shall not result in a judgment which is binding on the Parties. Participation in this procedure shall be voluntary. The provisions in this paragraph of this Article shall not preclude a Party which so desires from skipping the IT mediation procedure and immediately pursuing the dispute procedure mentioned in Article 18.2.