

# GENERAL TERMS AND CONDITIONS OF DELIVERY

## Part 1 - General

### 1. Definitions

1.1 In these general terms and conditions of delivery, the following terms have the meanings referred to:

- "Services"** : the work to be performed by the Supplier for the benefit of the Client as defined in the Agreement;
- "Client"** : an opposing party of the Supplier under an Agreement;
- "Supplier"** : (a) Pro Develop B.V. (Ch. of Comm.: 30163695);  
(b) Promatrix B.V. (Ch. of Comm.: 30088605);  
(c) Indus Integrated Bulk Logistics B.V. (24362907);  
(d) Cellro B.V. (Ch. of Comm.: 24371192);  
(e) Cellro Technology B.V. (Ch. of Comm.: 65729951);  
(f) Cellro FMS B.V. (Ch. of Comm.: 73055778), and/or their affiliated (legal) persons using these general terms and conditions of delivery;
- "Agreement"** : an agreement between the Supplier and the Client to sell and supply Products;
- "Products"** : all products sold and delivered by the Supplier to the Client.

### 2. Scope of application

2.1 These general terms of delivery apply to any legal relationship between the Supplier and the Customer. It is established between the Supplier and the Customer that once these general terms and conditions of delivery apply to a legal relationship arising between them, including but not limited to an Agreement, they also apply in full to subsequent legal relationships.

2.2 Any derogation from these general terms and conditions of delivery are only valid provided that it is expressly agreed to in writing in advance. In case of conflict between the provisions of these general terms and conditions of delivery and what has been agreed under an Agreement, the provisions of the Agreement prevail. In case of inconsistency between the provisions in Part 2 and Part 3 on the one hand and Part 1 on the other hand of these general terms and conditions of delivery, the provisions in Part 2 and Part 3 respectively prevail over Part 1.

2.3 The Supplier is entitled to unilaterally (i.e. without the consent of the Customer) amend these general terms and conditions of delivery, in which case the amended version of the general terms and conditions of delivery apply to the Agreement.

2.4 Insofar as these general terms and conditions of delivery are also drawn up in a language other than Dutch, in case of differences the Dutch text will always be decisive.

### 3. Creation of the Agreement

3.1 Unless expressly stipulated otherwise in writing, all offers and other communications issued by the Supplier are free of obligation. Obvious mistakes, printing and/or typesetting errors in offers and other statements by the Supplier are not binding. All quotations and offers of the Supplier are based on the information provided by the Customer.

3.2 The Supplier is never obliged to accept requests from the Customer to supply Products and/or perform Services.

3.3 All quotations and offers of the Supplier are maintained for thirty (30) days, unless a quotation or offer states otherwise. A subsequent quotation or offer replaces an earlier quotation or offer (as a result of which the earlier quotation or offer lapses), regardless of whether the earlier quotation or offer contains a deadline for acceptance and regardless of whether the Customer has already sent a notice of acceptance.

3.4 An Agreement is only concluded: (a) after written acceptance by the Supplier of the order to deliver Products and/or perform Services, whether or not by the Supplier sending an order confirmation to the Customer, or (b) by actual execution of the order by the Supplier.

3.5 For orders and/or work for which no quotation or order confirmation is sent by the Supplier, the description on the Supplier's invoice reflects what the parties have agreed.

3.6 Verbal undertakings by employees of the Supplier do not bind the Supplier except after and insofar as they have been confirmed by it to the Customer in writing.

3.7 If and insofar as an order to deliver Products and/or perform Services is given by several Customers jointly, all Customers involved are jointly and severally liable to the Supplier for all (payment) obligations arising from the Agreement.

### 4. Payment

4.1 Unless otherwise agreed in writing, the Customer pays all invoices within thirty (30) days from the invoice date. This concerns a strict deadline as referred to in Section 6:83(a) of the Dutch Civil Code.

4.2 The Supplier is entitled to require an advance payment and/or securities from the Customer before the Supplier is obliged to perform the Agreement.

4.3 All (bank) costs related to payment, including any provision of security, are borne by the Customer.

4.4 If the Customer is in default regarding the fulfilment of its (payment) obligations towards Supplier, the Customer is obliged to reimburse all costs incurred by the Supplier, including but not limited to the actual costs of legal assistance. The extrajudicial collection costs to which the Supplier is entitled are in no case less than the amount to be calculated in accordance with the Compensation for Extrajudicial Collection Costs (Fees) Decree or any successor regulation, irrespective of whether the aforementioned decree is materially applicable to the Supplier's claim.

4.5 The Customer is never entitled to set off one or more claims, alleged or otherwise, against the Supplier against debts to the Supplier.

4.6 If the Customer disputes the amount of the invoice, it must notify the Supplier of its objections in writing within thirty (30) days of the invoice date on pain of forfeiting the right to do so. However, the expression of objections by the Customer does not suspend the Customer's payment obligation.

### 5. Liability

5.1 The total liability of the Supplier on account of attributable failure in the performance of the Agreement is limited per loss-causing event to the amount paid out to it by the Supplier's liability insurance in the case in question and, if no payment is made, limited to reimbursement of the amount

paid by the Customer under the Agreement from which the loss arose and in any event limited to an amount of €50,000.00 (*in words: fifty thousand euros*).

**5.2** A loss-causing event is considered to be a single event or conduct or related series of events or conduct, as well as any event connected with the event that caused the loss, in the sense that the Supplier can only be held liable once for a loss-causing event.

**5.3** The Supplier's liability for indirect loss, consequential loss, loss of profit, loss arising from claims of third parties against the Customer, loss arising from exceeding a term or property damage consisting of destruction or loss of, or damage to, property used by the Customer in the ordinary course of its profession or business is excluded.

**5.4** The Supplier is only liable on account of attributable failure in the performance of the Agreement if the Customer gives proper written notice of default to the Supplier within two (2) months of the Supplier becoming aware of the failure, stating a reasonable term for rectifying the failure, and the Supplier's attributable failure in the performance of its obligations continues after this term. The notice of default must contain a description of the failure that is as detailed as possible.

**5.5** The Customer indemnifies the Supplier against all claims of third parties in respect of loss that would remain for the Customer's account under the provisions of Articles 5.1 to 5.4 of these general terms and conditions of delivery if the third party in question were to sue the Customer.

**5.6** The provisions of Article 5.1 up to and including 5.4 of these general terms and conditions of delivery also apply for the benefit of all natural persons or legal entities engaged by the Supplier in the performance of the Agreement.

**5.7** The exclusions and limitations referred to in Article 5.1 up to and including 5.4 of these general terms and conditions of delivery lapse if and insofar as the loss results from intent or deliberate recklessness on the part of Supplier's management.

## **6. Force majeure**

**6.1** If the Supplier is unable to perform its obligations toward the Customer on account of non-attributable failure (force majeure), these obligations are suspended for the duration of the force majeure.

**6.2** Force majeure on the part of the Supplier is understood to include all circumstances beyond the Supplier's control as a result of which performance of its obligations, or part thereof, toward the Customer is prevented, delayed or made economically impossible and cannot be reasonably demanded from the Supplier. Force majeure includes a failure of auxiliary persons and/or suppliers engaged by the Supplier, transport problems, technical or computer breakdowns, fire, (water) damage, restrictive government measures (irrespective of whether these government measures relate directly to the Supplier's business) and/or epidemics. If a situation of force majeure has continued for more than sixty (60) days, the parties are entitled to dissolve the Agreement in writing. In such an event, any performances already made under the Agreement are settled on a proportional basis, without any other claims arising on either part.

## **7. Termination**

**7.1** The Supplier is entitled to terminate the Agreement without notice of default and without judicial intervention by written notice, in whole or in part, by termination with immediate effect, if:

- (a) the Customer defaults on its (payment) obligations;
- (b) the Customer is granted suspension of payments, whether provisional or not;
- (c) bankruptcy is filed for with regard to the Customer or if its company is liquidated or terminated, or in case the Customer is a natural person he applies for admission to the Debt Restructuring (Natural Persons) Act or a request to that effect has been filed;

and without the Supplier being liable for any compensation, compensation of damages and/or restitution on account of such termination.

**7.2** If, at the time of termination of the Agreement as referred to in Article 7.1 of these general terms and conditions of delivery, the Customer has already received performance in execution of the Agreement, this performance and the related payment obligation will not be undone. Amounts already invoiced by the Supplier before the termination remain due in full and become immediately payable at the time of the termination.

## **8. Intellectual property rights**

**8.1** All industrial or intellectual property rights concerning offers issued by the Supplier and Products delivered by the Supplier and/or information made available by the Supplier, including but not limited to samples, brochures, drawings, descriptions, models, trademarks, product specifications, designs, styling are subject to the copyright or model right of Supplier or its licensors and remain its property, or that of its licensors, even if costs have been charged. By entering into an Agreement with the Supplier, the Customer declares to refrain from any infringement of the industrial or intellectual property rights of the Supplier or its licensors, even when no rights have been filed, and to make every effort to prevent or end any infringement by third parties. The Customer is not entitled to use said documents or the data contained therein or otherwise made known to it other than within the framework of the performance of the Agreement.

**8.2** All intellectual property rights relating to the Services provided and/or software made available by the Supplier remain and will remain vested in the Supplier, or its licensors, unless explicitly agreed otherwise in writing.

**8.3** If one or more third parties hold the Customer liable for an (actual or alleged) infringement of industrial or intellectual property rights that these third parties have or believe to have on the Products, or in case the Products infringe their rights or the third parties believe they do, the Customer is obliged to immediately: (a) notify the Supplier in writing of the aforementioned claim, (b) send to the Supplier a copy of all correspondence from such third parties in relation to the (alleged) claim, (c) follow, at its own expense, any instructions given by the Supplier in connection with the mitigation of loss, including but not limited to taking the Products or part thereof out of circulation and/or putting up a defence and (d) cooperate with the Supplier at its own expense in order to enable Supplier to comply with its legal (information) obligations vis-à-vis these third parties. The provisions above in subparagraphs c and d apply mutatis mutandis in the event (a) third parties hold Supplier liable for an (actual or alleged) infringement of industrial or intellectual property rights that such third parties have or believe to have on the Products, or in the event that the Products infringe their rights or that the third parties believe they do.

## **9. Privacy**

**9.1** Insofar as the Supplier processes personal data (personal information about an identified or identifiable natural person) in the context of the performance of the Agreement, this is done in a proper and careful manner and in accordance with the General Data Protection Regulation. The Supplier's privacy policy is detailed in the Supplier's privacy statement applicable to the Agreement. The privacy policy can be found on the Supplier's website.

**9.2** The Supplier adopts all appropriate technical and organisational measures to secure personal data against loss or any form of unlawful processing of personal data. These measures guarantee, taking account of the state of the art and the costs of their implementation, an appropriate security level in view of the risks the processing and the nature, scope and context of the personal data that must be protected entail.

## **10. Final provisions**

**10.1** The Supplier is entitled to include references to the Customer on its website and through other channels, including social media.

**10.2** During the term of the Agreement until a period of two (2) years after the end of the Agreement, the Customer is not allowed to approach customers, suppliers, contractors and/or relations of the Supplier with the result that these parties terminate their commercial or other relationship with the Supplier or change it in a way that is detrimental to the Supplier.

**10.3** During the term of the Agreement until a period of two (2) years after the end of the Agreement, the Customer is not allowed to enter into an employment contract or agreement for services directly or indirectly with: (a) an employee of the Supplier or (b) a former employee of the Supplier whose employment contract with the Supplier ended less than one (1) year ago.

**10.4** If the Customer has failed to fulfil any of the obligations under Articles 10.2 and/or 10.3 of this Agreement, the Customer immediately forfeits to the Supplier, without any further notice of default, a penalty of €20,000.00 (*in words: twenty thousand euros*) for each default, increased by €2,500.00 (*in words: twenty-five hundred euros*) for each day or part of a day that the default continues, without prejudice to the Supplier's additional entitlement to claim performance or full compensation of the loss suffered by it.

**10.5** The right of the Customer to terminate and/or set aside the Agreement in whole or in part and the right of suspension (including the right of retention) or set-off is excluded. The provisions of Section 7:17 of the Dutch Civil Code are also excluded.

**10.6** In the case of nullity of one or more of the provisions of the Agreement and/or the general terms and conditions of delivery, the Supplier and the Customer will enter into discussions in order to agree on new provisions to replace the null and/or void provisions, whereby the purpose and meaning of the void or nullified provisions are taken into account as much as possible.

**10.7** The legal relationship, including the Agreement and these general terms and conditions of delivery, between the Supplier and the Customer is governed exclusively by Dutch law. The Vienna Sales Convention does not apply.

**10.8** Disputes between the Supplier and the Customer are settled exclusively by the competent court in Utrecht.

## **Part 2 - Products**

*This Part 2 applies in addition to Part 1 to the sale and supply of Products by the Supplier to the Customer.*

## **11. Price**

**11.1** The prices charged by the Supplier are in the euro currency and exclusive of sales tax (VAT), shipping costs, excise duties and any other levies imposed by the government, unless explicitly stated otherwise by the Supplier.

**11.2** The shipping costs to be charged to the Customer by the Supplier depend on the carrier engaged by the Supplier and the size and quantity of the Products to be delivered.

**11.3** The Supplier has the right to increase the agreed prices for delivery of Products on the basis of increases in purchase prices and/or freight rates of the Products and/or the raw materials required for the production of the Products and/or surcharges on levies imposed by the government and/or increases of rates by contractors of the Supplier.

## **12. Delivery and delivery deadlines of Products**

**12.1** The Products are delivered 'Ex Works' to the Supplier's address in accordance with Incoterms 2020, unless otherwise agreed in writing. If the Customer, or a third party authorised to take delivery of the Products on behalf of the Customer, refuses to take delivery of the Products there, the resulting costs are borne by the Customer and the risk of the Products nevertheless passes to the Customer at that time.

**12.2** If and insofar as it has been agreed that the Products will be delivered to the Customer by the Supplier, delivery takes place at the expense and risk of the Customer. The Customer agrees that the carrier engaged by the Supplier may deliver the Products to the neighbours of the delivery address provided by the Customer. In such a case, delivery to the neighbours is deemed delivery by the Supplier to a third party designated by the Customer.

**12.3** If the Products cannot be delivered to the Customer, the Products are stored by the Supplier at the Customer's expense and risk.

**12.4** The Supplier is entitled to deliver the Products in partial deliveries and to send a separate invoice for each partial delivery.

**12.5** All deadlines (for delivery or otherwise) stated and/or agreed by the Supplier are set to the best of its knowledge, but are never binding. The mere failure to meet a deadline (for delivery or otherwise) which has been mentioned or agreed to shall not result in the Supplier being in default. In the event that any deadline is exceeded, the Supplier will still deliver the Products to the Customer as soon as possible. Stocks and/or delivery deadlines communicated by the Supplier are purely indicative and the Customer cannot derive any rights from them.

**12.6** The Supplier is not obliged to return packaging materials.

## **13. Right to complain and conformity**

**13.1** The Customer is obliged to check immediately after delivery of the Products that the delivered Products have no external defects and correspond to the description on the packing slip. If the Customer has not reported discrepancies between the delivered Products and the description on the packing slip and/or external defects within eight (8) days, the description on the packing slip and the delivered Products are deemed to correspond.

**13.2** The Supplier does not guarantee that the Products are suitable for the purpose for which the Customer intends to use them, even if this purpose has been made known to the Supplier, unless otherwise agreed in writing.

**13.3** If the Customer is of the opinion that the Products do not possess the properties that it could expect on the basis of the Agreement, the Customer must notify the Supplier in writing immediately after it has identified or could reasonably have identified any discrepancy.

**13.4** If the Customer reports any discrepancies between the delivered Products and the Customer's reasonable expectations as based on the Agreement in time, the Supplier will acknowledge this report to the Customer in writing. The Supplier will consult with the Customer and perform any necessary examinations as soon as possible and the Customer will give the Supplier the opportunity to determine, or instruct a third party to determine, any discrepancies within thirty (30) days after the report has become known to the Supplier.

**13.5** Complaints do not entitle the Customer to suspend its payment obligation(s).

**13.6** If the Supplier finds a claim justified, the Supplier will, at its discretion, either pay compensation up to a maximum of the invoice value of the Products concerned or repair or replace the Products concerned free of charge.

**13.7** If the Customer has treated, processed or redelivered all or part of the Products and after the expiry of a period of one (1) year from delivery of the Products, the right to complain and/or compensation will lapse.

## 14. Returns

14.1 The Supplier is not obliged to accept return shipments from the Customer without prior written consent.

14.2 Return shipments for which the Supplier has given its consent are at the Supplier's expense and risk. Receipt of returns does not in any way imply acknowledgement by the Supplier of the reason given by the Customer for return.

14.3 If the Supplier accepts a return from the Customer and the Supplier decides to credit the Customer, the Supplier will credit the Customer for such return.

14.4 The Supplier is entitled to charge handling and shipping costs to the Customer for accepting returns.

## 15. Retention of title

15.1 All Products delivered to the Customer remain the property of the Supplier until all amounts owed by the Customer for the Products delivered by the Supplier have been paid to the Supplier in full. The Supplier also reserves Ownership of the Products delivered and to be delivered to the Customer for any future claims against the Customer.

15.2 The Customer must clearly mark the Products subject to the Supplier's retention of title as the Supplier's property.

15.3 If the Customer acts as a reseller, the Customer may resell and deliver the Products subject to the Supplier's retention of title, but only to the extent customary in the normal course of its business.

15.4 At the Supplier's first request, the Customer provides sufficient security for the full performance of all its (payment) obligations towards the Supplier.

15.5 The Customer immediately informs Supplier in writing if:

- (a) third parties make claims or attempts to take control of or seize Products covered by the Supplier's retention of title or otherwise assert rights over such Products;
- (b) (provisional) suspension of payments or debt settlement is applied for or granted to the Customer or any (payment) arrangement is made with the Customer's creditors, or
- (c) the Customer's bankruptcy is filed for or the Customer is declared bankrupt, or
- (d) if the Customer qualifies as a natural person, is admitted to the Debt Restructuring (Natural Persons) Act or a request to do so is submitted.

15.6 The Customer authorises Supplier to enter the room(s), where the Products are located, at any time (i.e. also outside the Customer's normal working and/or opening hours) in order to gain and take possession of the Products by invoking its retention of title.

15.7 The Customer properly insures the Products subject to Supplier's retention of title against normal business risks at its own expense.

15.8 As long as Supplier retains title to the Products, Customer may not pledge or otherwise encumber the Products to third parties as additional security.

## 16. Transfer of risk

16.1 The risk of loss of or damage to Products that are the subject of the Agreement passes to the Customer at the time they are delivered to the Customer in accordance with the provisions of Article 12.1 of these general terms and conditions of delivery.

## 17. Product recall

17.1 If and to the extent that Supplier becomes aware of an actual or alleged defect in the Products or in the event that Supplier's direct or indirect supplier decides to carry out a *product recall*, the Customer is obliged at the first request of Supplier and/or its direct or indirect suppliers: (a) to provide all information relevant to the assessment of the actual or alleged defect and the extent thereof, (b) to provide all information about the customers to whom the Customer has resold the Products and the end-users who (probably) use the Products, (c) at its own expense and risk do and refrain from doing all that is necessary to remove (the allegedly defective) Products from the market, including but not limited to the retrieval of already sold and delivered Products and (d) to render every cooperation in informing the Customer's customers and the end-users who (probably) use the Products about the actually or allegedly defective Products and the instructions to be observed by such customers.

17.2 In the event that it is established that the Products are defective - such at the sole discretion of Supplier and/or its (indirect) supplier - the Customer will be obliged to sell back its stock and deliver it to Supplier at the purchase price.

17.3 Under no circumstances is the Supplier liable for a *product recall*, unless there is intent or conscious recklessness on the part of the Supplier's management. If and to the extent that it is established that the Supplier is nevertheless liable, the provisions of Article 5 of these general terms and conditions of delivery apply in full.

## Part 3 - Services

*This Part 3 applies in addition to Part 1 to the provision of Services by the Supplier to the Customer.*

## 18. Nature and scope of Services

18.1 The Agreement consisting of the provision of Services to the Customer qualifies as an agreement for services as referred to in Section 7:400 et seq. of the Dutch Civil Code. The Supplier performs the Services as an independent contractor and not as an employee, agent, partner of the Customer or in the form of a joint venture.

18.2 The Supplier has a best-efforts obligation to perform the Services to the best of its ability. Unless otherwise agreed in writing, the Supplier has no obligation to achieve a result.

18.3 Any and all delivery deadlines or other terms stated and agreed by the Supplier have been determined to the best of its knowledge, but will in no event be binding or firm deadlines within the meaning of Section 6:83(a) of the Dutch Civil Code. The mere exceeding of a stated or agreed term does not put Supplier in default nor does it constitute an attributable failure.

18.4 If it has been agreed that the Agreement will be performed in phases, the Supplier may suspend performance of those elements pertaining to a following phase until the Customer has approved the results of the preceding phase in writing.

18.5 The provisions of Section 7:403, 7:404, 7:407(2) and 7:409 of the Dutch Civil Code do not apply to the Agreement.

## 19. Provision of the Services

19.1 The Supplier is entitled to engage third parties to perform the Services. The Supplier is also entitled to have the Services or part thereof performed by legal entities within the Supplier's group, on the understanding that only the legal entity that is party to the Agreement is responsible and liable for performance of the Services.

19.2 The Supplier always proceeds with due care when engaging third parties. However, the Supplier is not liable for loss resulting from third-party failures. The Supplier is entitled to accept any third-party limitations of liability on behalf of the Customer.

**19.3** If during the performance of the Agreement more or different Services have been performed for the benefit of the Customer than those ordered (additional work), it will be presumed from the records of the Supplier that this additional work has been performed pursuant to additional order of the Customer.

**19.4** If the Supplier uses telecommunications and/or electronic data exchange to perform the Services, regardless of whether the medium is prescribed by the Customer or not, this takes place at the expense and risk of the Customer.

## **20. Obligations of the Customer**

**20.1** The Customer is obliged to cooperate in the performance of the Services by the Supplier. Such cooperation includes, inter alia, that the Customer provides and continues to provide the necessary facilities and employees in a timely manner, provides the necessary data and information in a timely manner and, if applicable, grants access to the location where the Services are to be performed. The Customer itself is responsible for the activities of its employees and auxiliary persons engaged by it, for the timely and lawful processing and provision or making available of correct and complete information and data by or on behalf of the Customer to the Supplier. The information is provided in the form and manner requested by the Supplier.

**20.2** If the information required for performance of the Agreement has not been provided to the Supplier in good time, the Supplier is entitled to suspend performance of the Agreement and/or pass on the additional costs ensuing from the delay to the Customer (calculated in accordance with the rates applied by the Supplier).

**20.3** If the Services are performed at the Customer's premises or a location designated by the Customer, the Customer is responsible vis-à-vis the Supplier and its employees for complying with the obligations arising from Section 7:658 of the Dutch Civil Code, the Working Conditions Act and from other regulations relating to workplace safety and good working conditions in general.

**20.4** If an employee of the Supplier suffers damage during the performance of the Services in the situation referred to in Article 20.3 of these general terms and conditions of delivery, the Customer is obliged to inform the Supplier of this in writing without delay, to prepare and provide the Supplier with a written report of the incident. If required by law, the Customer also informs the competent authorities of the incident without delay. The aforementioned report documents the facts surrounding the incident in such a way that it can be concluded with a reasonable degree of certainty whether and to what extent the damage was the result of the fact that insufficient measures had been taken to prevent the damage.

**20.5** The Customer compensates the Supplier's employee for all damage that the employee suffers in the performance of the Services in the situation referred to in Article 20.3 of these general terms and conditions of delivery, if and insofar as the Customer and/or the Supplier is/are liable for this under Section 7:658, Section 7:611 and/or Section 6:162 of the Dutch Civil Code.

**20.6** The Customer guarantees that the performance of the Services does not infringe any third-party intellectual property or other rights and irrevocably and unconditionally indemnifies the Supplier against third-party claims in this regard.

## **21. Fee and costs**

**21.1** Unless otherwise agreed in writing, the Supplier is entitled to a fee for performing the Services, consisting of the time spent multiplied by the hourly rate usually applied by the Supplier. The hourly rate applied by the Supplier and charged to the Customer is deemed customary and reasonable as referred to in Section 7:405(2) of the Dutch Civil Code, subject to evidence to the contrary by the Customer.

**21.2** The Supplier is entitled to index the fee agreed with the Customer, whether or not this is a <2945>fixed fee<2945>, each time with effect from 1 January of a subsequent calendar year on the basis of the consumer price index (CPI) year 2015 (2015=100) as published by Statistics Netherlands.

**21.3** Unless otherwise agreed in writing, travel and accommodation expenses incurred by the Supplier are charged separately to the Customer. Travel expenses incurred within the Netherlands are charged at €0.38 per kilometre.

**21.4** All pre-calculations and budgets issued by the Supplier are indicative only, unless otherwise provided in the Agreement. No rights may ever be derived by the Customer from a pre-calculation or budget issued by the Supplier. An available budget made known to the Supplier by the Customer never applies as an agreed (fixed) fee for the Services provided by the Supplier. The Supplier is obliged to inform the Customer a pre-calculation or budget issued by the Supplier is at risk of being exceeded only if this has been agreed in writing.

**21.5** If and insofar as the fee for the Services to be performed by the Supplier consists of a fixed fee and/or arises from a predetermined graduated rate, it is deemed that this fee (structure) has been determined on the basis of information made available to the Supplier by the Customer prior to the conclusion of the Agreement. If during the performance of the Services it appears that the information and/or assumptions on which this fee (structure) is based deviate from the actual situation, the Supplier is entitled to adjust the fee (structure) accordingly.