

# General Terms and Conditions

*By*

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## **TERMS OF DELIVERY AND CONDITIONS**

These general terms and conditions (hereinafter: the “General Terms and Conditions”) shall apply to all legal relationships between Levi9 Global Sourcing Benelux B.V. having its registered office and/or principal place of business in Amsterdam the Netherlands and the companies pertaining thereto (within the meaning of Article 2:24a and/or c of the Dutch Civil Code), also when these companies do not use the name of “Levi9” in their trade names (hereinafter: “Levi9”), and its other parties (hereinafter to be referred to as (hereinafter: the “Client”). A copy of these General Terms and Conditions will be sent prompt and free of charge at the Client’s request.

## **GENERAL PROVISIONS**

### **Article 1 Offer and agreement**

- 1.1 These provisions shall apply to all offers, legal relationships and agreements under which Levi9 provides goods and/or services of whatever nature to the Client. Deviations from and additions to these General Terms and Conditions shall only be valid if they have been expressly agreed in writing.
- 1.2 All offers and other statements by Levi9 shall be without obligation, unless Levi9 expressly indicates otherwise in writing. The Client warrants the accuracy and completeness of the measurements, requirements, performance specifications and other data on which Levi9 bases its offer and which have been stated by or on behalf of the Client to Levi9.
- 1.3 The application of the Client's purchasing or other terms and conditions is expressly rejected.
- 1.4 If any provision of these General Terms and Conditions is null and void or annulled, the other provisions of these General Terms and Conditions shall remain in full force.
- 1.5 Levi9 may always state additional requirements concerning communication between the Parties or performance of legal acts by e-mail.

### **Article 2 Price, rate and payment**

- 2.1 All prices shall be exclusive of turnover tax (VAT) and other levies imposed by the government.

- 2.2 Levi9 may adjust the rates and prices from time to time upon 2 (two) months prior written notice, unless the Parties have agreed on a fixed price. All rates and prices shall apply for a period of 6 (six) months, unless specified otherwise. If the Client does not wish to agree to such an adjustment, the Parties will consult with each other. If this consultation between Parties has not lead to an acceptable result for the Client, the Client shall, within 30 (thirty) days after the notice, be entitled to terminate the agreement before the date on which the adjustment would have become effective.
- 2.3 The Parties shall record in the agreement the date or dates on which Levi9 shall charge the Client the fee for the agreed performance. The Client shall pay invoices in accordance with the payment conditions stated on the invoice. In the absence of a specific provision, the Client shall pay within 30 (thirty) days after the invoice date. The Client shall not be entitled to set off or to suspend a payment.
- 2.4 If the Client does not pay the amounts owed in a timely manner, the Client shall owe legal interest on the outstanding amount, without any written demand or notice of default being necessary. If the Client still does not pay the claim after a written demand or notice of default, Levi9 can pass on the claim for collection, in which case the Client shall, in addition to the total amount owed then, be obliged to pay for all in-court and out-of-court expenses, including expenses charged by external experts in addition to the costs determined at law, with a minimum amount of €750 (seven-hundred-fifty euro). The Client shall also owe the expenses incurred by Levi9 in regard to unsuccessful mediation if the Client is ordered by a judgment to pay the outstanding amount in full or in part.

### **Article 3 Confidential information, taking over employees and privacy**

- 3.1 Each of the Parties warrants that all of the information received by the other Party which is known to be or should be known to be confidential in nature shall remain secret, unless a legal obligation mandates disclosure of that information. The Party receiving the confidential information shall only use it for the purpose for which it has been provided. Information shall in any event be considered confidential if it is designated by either of the Parties as such.
- 3.2 Without Levi9's prior consent the Client shall not hire any employee of Levi9 or employees of suppliers of Levi9 involved in the performance of Services to the Client or any other Levi9 employee as from the commencement date of the agreement up until 12 (twelve) months after the end of the last agreement, and shall refrain from making any

business proposals or offers to an employee of Levi9 or employees of suppliers of Levi9 involved in the performance of services to the Client or any other Levi9 employee. Upon any violation of the provisions set out in this article, Levi9 shall have the right to cease the services to the Client with immediate effect without any further obligations arising and impose a penalty on the Client payable on demand and without notice of default, amounting to €30,000 (thirty-thousand euro) per event.

- 3.3 The Client shall indemnify Levi9 against claims by persons whose personal data has been recorded or processed in connection with a register of persons maintained by the Client or for which the Client is responsible under law or otherwise, unless the Client proves that the facts underlying the claim are solely imputable to Levi9.

#### **Article 4 Retention of title and rights, specification and possessory lien**

- 4.1 All objects delivered to the Client shall remain Levi9's property until all amounts owed by the Client for the objects delivered or to be delivered or work performed or to be performed under the agreement, as well as all other amounts which the Client owes due to a breach of its payment obligation, have been paid fully to Levi9. A Client acting as a reseller may sell and re-deliver all items subject to Levi9's retention of title insofar as that is common in connection with its normal business operations. If the Client creates a new object wholly or partly from the objects delivered by Levi9, the Client shall create that object solely for Levi9 and the Client shall hold the newly created object for Levi9 until the Client has paid all amounts owed under the agreement; in that event, Levi9 shall possess all rights as the owner of the newly created object until the time the Client makes full payment.
- 4.2 As the occasion arises, rights shall always be granted or transferred to the Client on the condition that the Client pay the agreed fees fully and in a timely manner.
- 4.3 Notwithstanding any delivery obligation, Levi9 may maintain possession of the objects, products, proprietary rights, information, documents, databases and interim or other results of Levi9's services which have been received or generated in connection with the agreement until the Client has paid all amounts owed to Levi9.

#### **Article 5 Risk**

- 5.1 The risk of loss or theft of or damage to objects, products, software or data which are the subject of the agreement shall pass to the Client at the time they have been placed at the actual disposal of the Client or an assistant used by the Client.

## **Article 6 Intellectual or industrial property rights**

- 6.1 All intellectual and industrial property rights to software, websites, databases, equipment or other materials developed or provided under the agreement, such as analyses, designs, documentation, reports, offers, as well as preparatory materials in that regard, shall be held solely by Levi9, its licensors or its suppliers. The Client shall only acquire the rights of use expressly granted in these Terms and Conditions and by law. Any other or more extensive right of the Client to reproduce software, websites, databases or other materials shall be excluded. A right of use to which the Client is entitled shall be non-exclusive and non-transferable to third parties.
- 6.2 If, in deviation from Article 6.1, Levi9 is prepared to undertake to transfer an intellectual or industrial property right, such an obligation may only be entered into expressly in writing. If the Parties expressly agree in writing that intellectual or industrial property rights regarding software, websites, databases, equipment or other materials specifically developed for the Client shall be transferred to the Client, this shall not affect Levi9's right to apply and to use, either for itself or for third parties, the parts, general principles, ideas, designs, documentation, works, programming languages and the like underlying that development, without any limitation on other purposes. Nor shall a transfer of intellectual or industrial property rights affect Levi9's right to undertake developments for itself or third parties which are similar to those done for the Client.
- 6.3 The Client expressly acknowledges and agrees that in case open source software is used and/or modified by Levi9, either on request by the Client or otherwise, regarding the development of software on behalf of the Client, the terms and conditions of the (End) User License Agreement(s) applicable to the used open source software are in force and may impose specific obligations on the Client regarding the use and/or exploitation of the aforementioned developed software in general and the used and/or modified open source software in specific.
- 6.4 The Client shall not be allowed to remove or modify any designation concerning the confidential nature or concerning copyrights, trademarks, business names or other intellectual or industrial property rights from the software, websites, databases, equipment or materials.
- 6.5 Unless Levi9 provides a back-up copy of the software to the Client, the Client may make one back-up copy of the software, which may only be used to protect against in voluntary loss of possession or damage. The back-up copy may only be installed after

involuntary loss of possession or damage. In accordance with Article 6.4 a back-up copy must have the same labels and copyright designations as are present on the original version.

- 6.6 Subject to the other provisions of these General Terms and Conditions, the Client shall be entitled to correct errors in software provided to it if that is necessary for the intended use of the software. In these General Terms and Conditions, "error" shall mean a substantial failure to meet the functional or technical specifications stated in writing by Levi9 and, in the case of custom-made software and websites, the functional or technical specifications expressly agreed between the Parties in writing. An error shall only exist if the Client can prove it and if it can be reproduced. The Client shall be obliged to notify Levi9 of errors immediately.
- 6.7 Levi9 shall indemnify the Client against any third-party cause of action based on the claim that because of acts or omissions from Levi9, software, websites, databases, equipment or other materials developed by Levi9 itself infringe an intellectual or industrial property right applicable in The Netherlands, on the condition that the Client immediately informs Levi9 in writing about the existence and substance of the cause of action and let Levi9 handle the matter completely, including with respect to agreeing to any settlements. To that end, the Client shall provide the necessary powers of attorney, information and cooperation to Levi9 to defend - if necessary, in the Client's name - against these causes of action. This indemnification obligation shall be extinguished if the alleged infringement relates (i) to materials provided by the Client to Levi9 for use, adaptation, processing or incorporation, or (ii) to changes the Client has made or caused third parties to make to the software, website, databases, equipment or other materials. If it has been established in court as an incontrovertible fact that the software, websites, databases, equipment or other materials developed by Levi9 itself infringe any intellectual or industrial property right held by a third party or if, in Levi9's judgment, it is likely that such infringement will occur, Levi9 shall, if possible, ensure that the Client can continue to have undisturbed use of the delivered objects, or functionally equivalent other software, websites, equipment or the other materials concerned, for example, by modifying the infringing parts or by acquiring a right of use for the Client. If, in its exclusive judgment, Levi9 cannot ensure or cannot ensure except in a manner that is unreasonably burdensome (financially or otherwise) for it that the Client can continue to have undisturbed use of the delivered objects, Levi9 shall take back the delivered objects, with crediting of the acquisition costs minus a reasonable user's fee. Levi9 shall not make its choice in this regard until after the Client has been consulted. Any other or

more extensive liability or indemnification obligation on Levi9's part due to the infringement of a third party's intellectual or industrial property rights shall be completely excluded, including liability and indemnification obligations on Levi9's part for infringements caused by using the software, websites, databases, equipment and/or materials delivered (i) in any form not modified by Levi9, (ii) in connection with objects or software not delivered or furnished by Levi9 or (iii) in another manner besides that for which the equipment, software, websites, databases and/or other materials were developed or intended.

- 6.8 The Client warrants that there are no third-party rights which are inconsistent with providing Levi9 with equipment, software, materials intended for websites (visual material, text, music, domain names, logos etc.), databases, or other materials, including draft material, intended for use, adaptation, installation or incorporation (for example, in a website). The Client shall indemnify Levi9 against any action based on the claim that such provision, use, adaptation, installation or incorporation infringes a third-party right.

#### **Article 7 Cooperation by the Client; telecommunications**

- 7.1 The Client shall always furnish Levi9 in a timely manner with all data or information which is useful and necessary to execute the agreement properly and provide full cooperation, including furnishing access to its buildings. If the Client utilizes its own employees in cooperating in the execution of the agreement, these employees shall possess the necessary know-how, experience, abilities and characteristics.
- 7.2 The Client shall bear the risk of selecting, using and applying in its organization the equipment, software, websites, databases and other products and materials and the services to be provided by Levi9, and shall also be responsible for the monitoring and security procedures and proper system management.
- 7.3 If the Client furnishes software, websites, materials, databases or data to Levi9 on a data carrier, this carrier shall meet the specifications prescribed by Levi9.
- 7.4 If the Client does not provide Levi9 with the data, equipment, software 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 Client otherwise does not fulfill its obligations, Levi9 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 Levi9's right to exercise any other legal right.

- 7.5 In the event that employees of Levi9 perform work on-site at the Client's, the Client 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. The Client shall indemnify Levi9 against claims by third parties, including Levi9's employees, who, in executing the agreement, suffer injury which is the result of acts or omissions by the Client or of unsafe situations in its organisation. The Client shall provide timely notice to Levi9's employees to be utilised of the company and security rules applicable within its organisation.
- 7.6 If, in executing the agreement, telecommunications facilities, including the Internet, are used, the Client shall be responsible for properly selecting these and making them available in a timely and sufficient manner, except for those facilities directly used and managed by Levi9. Levi9 shall never be liable for damage or expenses due to transmission errors, malfunctions or the non-availability of these facilities, unless the Client proves that this damage or these expenses resulted from intentional acts or omissions or gross negligence on the part of Levi9 or its managers. If telecommunications facilities are used in executing the agreement, Levi9 shall be entitled to assign access or identification codes to the Client. Levi9 may change the assigned access or identification codes. The Client shall treat the access codes as confidential and with due care and shall only disclose them to authorized employees. Levi9 shall never be liable for damage or expenses resulting from misuse of access or identification codes.

## **Article 8 Delivery periods**

- 8.1 All delivery and other periods stated or agreed by Levi9 have, to the best of its knowledge, been determined based on data known to Levi9 when it entered into the agreement. Levi9 shall properly exert its best efforts to observe agreed delivery and other periods as much as possible. The mere fact that a stated or agreed delivery or other period has been exceeded shall not cause Levi9 to be in default. In all cases, hence, even if the Parties have expressly agreed on a firm date in writing, Levi9 shall not be in default because of a time period being exceeded until the Client has provided it with a written notice of default. Levi9 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 Levi9 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, Levi9 and Client shall consult with each other as soon as possible.

## **Article 9 Termination of the agreement**

- 9.1 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.
- 9.2 If an agreement which, by its nature and substance, will not end when certain conditions, acts or the like are fulfilled, has been entered into for an indefinite period of time, each of the Parties may terminate the agreement by written notice after proper consultation and with a statement of reasons. If the Parties have not agreed on an express notice period, a reasonable notice period must be observed in terminating the agreement. The Parties shall never be liable for damages for terminating the agreement.
- 9.3 In deviation from what has been provided for by statute in this regard through directory law, the Client may only terminate a services agreement in the cases stated in these Terms and Conditions.
- 9.4 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. Levi9 shall never be obliged on account of this termination to refund funds already received or to pay damages. In the event of the Client's liquidation, the right to use software provided to the Client shall be extinguished by law.
- 9.5 If, at the time of the rescission referred to in Article 9.1, the Client has already received performance in connection with execution of the agreement, this performance and the related payment obligation shall not be cancelled, unless the Client proves that Levi9 is in default with regard to that performance. Amounts which Levi9 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.

## **Article 10 Levi9's liability; indemnity**

- 10.1 Levi9's total liability for imputably failing to perform the agreement shall be limited to compensating direct damage, up to at most the amount of the price (exclusive of VAT) stipulated for that agreement. If the agreement is primarily a continuing performance agreement with a term exceeding one year, the price stipulated for the agreement shall be set at the total of the fees (exclusive of VAT) stipulated for one year. Direct damage shall solely mean:
- a. reasonable expenses which the Client would have to incur to make Levi9'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 the Client;
  - b. reasonable expenses which the Client has incurred out of necessity to keep its old system or systems and related faculties operating longer because Levi9 did not provide delivery on a firm delivery date which was binding for it, minus any savings resulting from the delay in delivery;
  - c. reasonable expenses incurred to determine the cause and scope of the damage, insofar as the determination relates to direct damage within the meaning of these Terms and Conditions;
  - d. reasonable expenses incurred to prevent or mitigate damage, insofar as the Client demonstrates that these expenses resulted in mitigation of direct damage within the meaning of these Terms and Conditions.
- 10.2 Levi9's liability for injury or damage through death or bodily injury or because of material damage to objects shall never exceed €1,250,000 (one million two hundred and fifty thousand euros).
- 10.3 Levi9's liability for consequential damage, consequential loss, lost profits, lost savings, loss of goodwill, damage through business interruptions, damage ensuing from claims by the Client's Clients, mutilation or loss of data, damage relating to the use of objects, materials or software of third parties prescribed by the Client for Levi9, damage relating to engagement of suppliers prescribed by the Client for Levi9 and all other forms of damage or injury besides those mentioned in Article 10.1 and 10.2, on any account whatsoever, shall be excluded.
- 10.4 The limitations mentioned in the preceding paragraphs of this Article 10 shall not apply if and insofar as the damage or injury is the result of intentional acts or omissions or gross negligence by Levi9 or its managers.

- 10.5 Levi9's liability because of an imputable failure to perform an agreement shall in all cases only arise if the Client immediately and properly provides a written notice of default to Levi9, with a reasonable time period for remedying the failure being given and Levi9 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 Levi9 can respond adequately.
- 10.6 For any right to damages to exist, the Client must always report the damage or injury to Levi9 in writing as soon as possible after it occurs. Any claim to damages against Levi9 shall be extinguished by the mere lapse of 12 (twelve) months after the claim arises.
- 10.7 The Client shall indemnify Levi9 against all third-party claims because of product liability ensuing from a defect in a product or system which has been delivered by the Client to a third party and which partly consisted of equipment, software or other materials delivered by Levi9, except if and insofar as the Client proves that the damage or injury was caused by that equipment, software or other materials.
- 10.8 The provisions in this Article shall also apply for the benefit of all legal and natural persons utilized by Levi9 in executing the agreement.

#### **Article 11 Force Majeure**

- 11.1 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 force majeure for Levi9's suppliers, improper performance of obligations by suppliers prescribed by the Client for Levi9, illness, dismissal or resignation of employees of Levi9 as well as defects in objects, materials or software of third parties which the Client has required Levi9 to use.
- 11.2 If a situation of force majeure lasts for more than 30 (thirty) 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.

#### **Article 12 Applicable law and disputes**

- 12.1 Dutch law shall govern the agreements between Levi9 and the Client. The Vienna Sales Convention of 1980 shall not apply.

12.2 Any dispute that might arise between the Parties in connection with the MSA or a DA, shall be resolved by the competent court in Amsterdam, The Netherlands, but not until the Parties have held discussions (if appropriate in English) about adhering to (i) the possibility of mediation pursuant to the IT Mediation Regulations of the Foundation for the Settlement of Automation Disputes in The Hague (IT mediation pursuant to these Regulations shall be based on mediation by one or more mediators, and this procedure shall not result in a judgment which is binding on the Parties and participation in this procedure shall be voluntary) or (ii) the possibility of arbitration in accordance with the Arbitration Regulations of the Foundation for the Settlement of Automation Disputes in The Hague (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).

## **COMPUTER SERVICES**

In addition to the General Provisions in these General Terms and Conditions, the provisions set forth in this Chapter "Computer Services" shall apply if Levi9 provides services in the area of computer services, including automated processing of data using software and equipment managed by Levi9.

### **Article 13 Term**

13.1 If the agreement relates to providing computer services periodically or regularly, the agreement shall be entered into for the term agreed between the Parties, in the absence of which a one-year term shall apply. The term of the agreement shall be tacitly extended each time by the length of the original period, unless the Client or Levi9 terminates the agreement in writing with due observance of a notice period of three months before the end of the period concerned.

### **Article 14 Performance of the work**

14.1 Levi9 shall only provide the computer services at the Client's instruction. If Levi9 provides computer services pursuant to an authorized order from a government body regarding information of the Client or its employees, all related expenses shall be charged to the Client. Levi9 shall provide the computer services with due care in accordance with the procedures and agreements recorded in writing with the Client.

14.2 All data to be processed by Levi9 shall be prepared and delivered by the Client in accordance with the conditions to be stated by Levi9. The Client shall bring the data to be

processed to and pick up the results of the processing at the location where Levi9 performs the computer services. Transport and transmission, in whatever manner, shall occur at the Client's expense and risk, even if they have been carried out or arranged by Levi9.

14.3 The Client warrants that all materials, data, software, procedures and instructions provided by it to Levi9 to perform the computer services shall always be correct and complete and that all data carriers furnished to Levi9 shall meet Levi9's specifications.

14.4 All equipment, software and other objects used by Levi9 for the computer services shall remain Levi9's property or the subject of Levi9's intellectual and industrial property, even if the Client pays a fee for Levi9 to develop or acquire them. Levi9 may maintain possession of the products and data received from the Client and the results generated from the processing until the Client has paid all amounts owed to Levi9.

14.5 Levi9 may modify the substance or scope of the computer services. If such modifications result in a change in the procedures applicable at the Client's, Levi9 shall inform the Client as soon as possible and the Client shall be responsible for the costs of this change. The Client may terminate the agreement in that case by providing written notice no later than the date on which the modification becomes effective, unless this modification relates to changes in relevant legislation or other rules provided by competent authorities or Levi9 assumes the costs of this modification.

14.6 Levi9 shall, to the best of its ability, do its utmost to ensure that the software used by it to perform the computer services is adapted in a timely manner to amendments in the Dutch laws and regulations observed by it in connection with its services. Upon request, Levi9 shall advise the Client at its usual rates with regard to the effects of these adaptations for the Client.

## **Article 15 Security, privacy and retention periods**

15.1 Levi9 shall comply with the statutory obligations which it has as a processor concerning its processing personal data. Levi9 shall provide appropriate technical and organizational measures to protect personal and other data against loss or against any form of unlawful processing.

15.2 The Client warrants that all statutory provisions concerning processing personal data, including provisions in or under the Personal Data Protection Act, have been strictly observed and that all prescribed registrations have been carried out and all required

consents to process personal data have been obtained. The Client shall provide Levi9 immediately in writing with all requested information in this respect.

15.3 The Client shall indemnify Levi9 against all third-party claims which may be filed against Levi9 because of a violation of the Personal Data Protection Act and/or other laws concerning processing personal data which is not imputable to Levi9.

15.4 The Client shall indemnify Levi9 against all claims of third parties, including government bodies, which may be filed against Levi9 because of a violation of the laws concerning the statutory retention periods.

## **Article 16 Guarantee**

16.1 Levi9 shall not be responsible for checking the accuracy and completeness of the results of the computer services. The Client shall check these results itself after receiving them. Levi9 does not warrant that the computer services shall be provided without errors or without interruptions. If defects in the results of the computer services are a direct consequence of products, software, data carriers, procedures or operating actions for which Levi9 is expressly responsible under the agreement, Levi9 shall repeat the computer services in order to fix these imperfections to the best of its ability, provided the Client notifies Levi9 of these imperfections in writing and in detail as soon as possible, but no later than within one week after receiving the results of the computer services. Repetition shall only be done free of charge if the defects in the computer services are imputable to Levi9. If the defects cannot be imputed to Levi9 and/or are the result of errors or imperfections on the Client's part, such as providing incorrect or incomplete information, Levi9 shall charge the costs of any repetition to the Client according to its usual rates. If fixing the defects imputable to Levi9 is not technically or reasonably possible, Levi9 shall credit the amounts owed by the Client for the computer services concerned, without further or otherwise being liable to the Client. The Client shall not have any other rights because of defects in the computer services besides those described in these guarantee provisions.

## **SERVICES**

In addition to the General Provisions in these General Terms and Conditions, the provisions set forth in this Chapter "Services" shall apply if Levi9 provides services, such as giving advice, feasibility studies, consultancy, study programmes, courses, training sessions, support, secondment, hosting, the design, development, implementation or management of software,

websites or information systems and services regarding networks. These provisions shall not affect the provisions included in these General Terms and Conditions concerning specific services, such as computer services, development of software and maintenance.

### **Article 17 Performance**

- 17.1 Levi9 shall, to the best of its ability, do its utmost to perform the services with due care and, where appropriate, in accordance with the agreements and procedures recorded in writing with the Client. All of Levi9's services shall be performed on the basis of a best efforts obligation, unless and insofar as Levi9 has expressly promised a result in the written 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.
- 17.2 If it has been agreed that the services shall be provided in stages, Levi9 shall be entitled to postpone the start of the services which are part of a stage until the Client has approved the results of the preceding stage in writing.
- 17.3 In performing the services, Levi9 shall only be obliged to follow timely and sensible instructions of the Client if this has been expressly agreed in writing. Levi9 shall not be required to follow instructions that change or supplement the substance or scope of the agreed services; if such instructions are followed, however, the work in question shall be compensated pursuant to Article 18 .
- 17.4 If a services agreement has been entered into with a view to performance by a particular person, Levi9 shall always be entitled to replace this person after consultation with the Client with one or more other persons with the same qualifications, unless agreed in writing otherwise by the Parties.
- 17.5 In the absence of an expressly agreed invoicing schedule, all amounts relating to services provided by Levi9 shall be owed once every calendar month in arrear.

### **Article 18 Modification and additional work**

- 18.1 If, at the request of or with prior consent from the Client, Levi9 has performed work or rendered other performance that goes beyond the substance or scope of the agreed services, the Client shall pay for that work or performance according to Levi9's usual rates. Expanding or modifying a system analysis, a design or specifications shall also consti-

tute additional work. Levi9 shall never be obliged to satisfy such a request, and it may require that a separate written agreement be concluded.

18.2 The Client accepts that work or performance as referred to in Article 18.1 may affect the agreed or expected time of completion of the services and the mutual responsibilities of the Client and Supplier. The fact that additional work (or the demand for it) arises during execution of the agreement shall never be a ground for the Client to rescind or terminate the agreement.

18.3 Insofar as a set price has been agreed for the services, Levi9 shall, upon request, inform the Client in writing in advance about the financial consequences of the extra work or performance.

## **DEVELOPMENT OF SOFTWARE**

In addition to the General Provisions in these General Terms and Conditions and the specific provisions in the Chapter "Services", the provisions set forth in this Chapter "Development of Software" shall apply if Levi9 develops software at the Client's instruction and possibly installs it. The Chapter "Software Use and Maintenance" shall also apply to this software, except insofar as this Chapter provides differently. The rights and obligations referred to in this Chapter shall pertain solely to computer software in a form which is readable for a data processing machine and recorded on material which is readable for such a machine, as well as to the related documentation. Where this Chapter mentions "software", this shall also refer to websites, and where this Chapter mentions "development of software", this shall also include the adjustment of standard third-party software.

### **Article 19 Development of software**

19.1 If specifications for or a design of the software to be developed were not already given to Levi9 when the agreement was concluded, the Parties shall in consultation specify in writing which software shall be developed and in which manner this shall occur. Levi9 shall develop the software with due care based on data to be provided by the Client, the correctness, completeness and consistency of which the Client shall warrant. If the Parties have agreed to use a development method which is characterized by the design and/or development of software parts being subject to a further setting of priorities to be determined during execution of the agreement, this setting of priorities shall always occur in consultation between the Parties.

- 19.2 Levi9 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 the Client has eliminated the imperfections concerned.
- 19.3 Subject to the provisions in Article 6 , the Client shall only acquire the right to use the software in its own company or organization. The software's source code and the technical documentation created in developing the software may only be made available to the Client if and insofar as expressly agreed in writing, in which case the Client shall be entitled to make changes to this software. If Levi9 is obliged at law to make the source code and/or technical documentation to the Client, Levi9 may demand a reasonable fee.

#### **Article 20 Delivery, installation and acceptance**

- 20.1 Levi9 shall deliver the software to be developed to the Client and install it as much as possible in accordance with the specifications recorded in writing, with installation only occurring if installation by Levi9 has been agreed in writing. In the absence of express agreements in this regard, the Client itself shall install, set up, design parameters for and tune the software and, if necessary, adjust the equipment and user environment used in this connection. Unless expressly otherwise agreed, Levi9 shall not be required to convert data.
- 20.2 If an acceptance test has been agreed, the test period shall be 14 (fourteen) days after delivery or, if installation by Levi9 has been agreed in writing, after the installation is completed. The Client shall not be allowed to use the software for productive or operational purposes during the test period. Levi9 may always require, hence, even if this has not been expressly agreed, that the Client conduct a proper test of sufficient scope and depth using sufficiently qualified employees as to interim or other results of the development work and that the test results be reported to Levi9 in writing and in a well-organized and comprehensible manner.
- 20.3 The software shall be considered accepted by the Parties:
- a. if an acceptance test has not been agreed between the Parties: at the time of delivery or, if installation by Levi9 has been agreed in writing, when the installation is completed, or
  - b. if an acceptance test has been agreed between the Parties: on the first day after the test period, or

- c. if Levi9 receives a test report as referred to in Article 20.5 before the end of the test period: at the time that the errors within the meaning of Article 6.6 mentioned in that test report have been fixed, notwithstanding the existence of imperfections which do not preclude acceptance under Article 20.6. In deviation from this, if the Client 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.
- 20.4 If, when the agreed acceptance test is conducted, it turns out that the software contains errors that impede the progress of the acceptance test, the Client shall prove this in written detailed notice to Levi9, in which case the test period shall be interrupted until the Software has been adjusted in such a manner that this impediment is eliminated.
- 20.5 If, when the agreed acceptance test is conducted, it turns out that the software contains errors within the meaning of Article 6.6, the Client shall inform Levi9 about the errors through a written and detailed test report no later than on the last day of the test period. Levi9 shall do its utmost to fix the aforementioned errors to the best of its ability within a reasonable time period, with Levi9 being entitled to install temporary solutions, program bypasses or problem avoiding restrictions in the software.
- 20.6 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 Levi9's obligation to fix these minor errors under the guarantee provisions of Article 23 , if applicable. In addition, acceptance may not be withheld with regard to aspects of the software that can only be evaluated subjectively, such as the design of the user interfaces.
- 20.7 If the software is delivered and tested in stages and/or parts, the non-acceptance of a particular stage and/or part shall not affect any acceptance of an earlier stage and/or another part.
- 20.8 Acceptance of the software in one of the ways referred to in Article 20.3 shall have the effect that Levi9 is fully discharged for performing its obligations concerning developing and providing the software and, if installation by Levi9 has also been agreed in a particular case, its obligations concerning installing the software. Acceptance of the software shall not in any way impair the Client's rights under Article 20.6 regarding minor defects and Article 23 regarding the guarantee.

20.9 In the absence of an expressly agreed invoicing schedule, all amounts pertaining to development of the software shall be owed when the software is delivered or, if installation by Levi9 has also been agreed in a particular case, when the installation is completed.

## **SOFTWARE USE AND MAINTENANCE**

In addition to the General Provisions in these General Terms and Conditions, the provisions set forth in this Chapter "Software Use and Maintenance" shall apply to all software provided by Levi9. The rights and obligations referred to in this Chapter shall pertain solely to computer software in a form which is readable for a data processing machine and recorded on material which is readable for such a machine, as well as to related documentation, all of this including any new versions to be furnished by Levi9. Where this Chapter mentions "software", this shall also refer to websites.

### **Article 21 Right of use**

21.1 Subject to the provisions in Article 6 , Levi9 shall grant the Client the non-exclusive right to use the software. The Client shall always strictly comply with the use restrictions agreed between the Parties. Subject to the other provisions in these General Terms and Conditions, the Client's right of use shall only include the right to load and run the software.

21.2 The Client may only use the software in its own company or organization on the one processing unit and for a specific number or type of users or terminals for which the right of use has been furnished. Insofar as not otherwise agreed, the Client's processing unit on which the software is used for the first time and the number of terminals connected to that processing unit at the time of initial use shall be considered the processing unit and number of terminals for which the right of use has been furnished. In the event there is a malfunction in the aforementioned processing unit, the software can be used on another processing unit for the duration of the malfunction. The right of use may pertain to multiple processing units insofar as this is expressly apparent from the agreement.

21.3 The right of use shall not be transferable. The Client shall not be allowed to sell, lease, sub-license or alienate the software and data carriers on which it has been recorded, grant restricted rights to this software or these data carriers or provide them to a third party in any manner or for any purpose whatsoever, unless agreed otherwise in writing. The Client shall not modify the software except in connection with fixing errors. The

software's source code and the technical documentation generated in developing the software shall not be made available to the Client, not even if the Client is prepared to pay financial compensation for making them available. The Client acknowledges that the source code is confidential in nature and that it includes Levi9's trade secrets.

21.4 The Client shall immediately return all copies of the software in its possession to Levi9 after the right to use the software ends. If the Parties have agreed that the Client shall destroy the copies concerned when the right of use ends, the Client shall provide written notice of such destruction to Levi9 immediately.

## **Article 22 Delivery, installation and acceptance**

22.1 Levi9 shall deliver the software to the Client on the agreed type and format of data carriers and, if installation by Levi9 has been agreed in writing, shall install the software at the Client's. In the absence of express agreements in this regard, the Client itself shall install, set up, design parameters for and tune the software and, if necessary, adjust the equipment and user environment used in this connection. Unless expressly otherwise agreed, Levi9 shall not be required to convert data.

22.2 If an acceptance test has been agreed between the Parties in writing, the provisions in Articles 20.2 to 20.7 shall apply by analogy. If the Parties have not agreed on any acceptance test, the Client shall accept the software in the condition in which it is at the time of delivery, hence, with all apparent and non-apparent errors and other defects, without prejudice to Levi9's obligations under the guarantee of Article 23 . The provisions in Article 20.8 shall apply fully in all cases.

22.3 In the absence of an expressly agreed invoicing schedule, all amounts pertaining to making the software available and the right to use the software shall be owed when the software is delivered or, if installation by Levi9 has also been agreed in writing in a particular case, when the installation is completed.

## **Article 23 Guarantee**

23.1 Levi9 shall do its utmost to fix errors in the software within the meaning of Article 6.6 to the best of its ability within a reasonable time period if they have been reported in writing and in detail to Levi9 within 4 (four) weeks after delivery or, if an acceptance test has been agreed between the Parties, within 4 (four) weeks after acceptance. Levi9 does not warrant that the software shall operate without interruption, errors or other defects or that all errors and other defects shall be corrected. Repairs shall be performed

free of charge if the Software has been developed at the Client's instruction and technical and functional specifications, and in all other cases Levi9 shall charge the repair costs according to its usual rates. Levi9 may charge the repair costs according to its usual rates if there have been operating errors or improper use on the Client's part or other causes not imputable to Levi9 or if the errors could have been ascertained when the agreed acceptance test was conducted. The guarantee shall not include fixing mutilated or lost data. The guarantee obligation shall be extinguished if the Client makes changes or has changes made to the software without Levi9's written permission, which permission shall not be withheld on unreasonable grounds.

- 23.2 Errors shall be fixed at a location to be determined by Levi9. Levi9 shall be entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the software.
- 23.3 Levi9 shall not have any obligations concerning fixing errors reported after the expiry of the guarantee period referred to in Article 23.1, unless the Parties have concluded a maintenance agreement which includes such a duty to fix.

## **Article 24 Maintenance**

- 24.1 If a maintenance agreement has been concluded for the software or if the user's fee for the software includes maintenance, the Client shall provide detailed notice to Levi9 of the errors observed in the software in accordance with Levi9's usual procedures. After receiving the notice, Levi9 shall, to the best of its ability, do its utmost to fix errors within the meaning of Article 6.6 and/or to make improvements in later, new versions of the software. Depending on the urgency, the results shall be provided to the Client in the manner and within the time period to be determined by Levi9. Levi9 shall be entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the software. In the absence of express agreements in this regard, the Client itself shall install, set up, design parameters for and tune the corrected software or the new version provided and, if necessary, adjust the equipment and user environment used in this connection. Unless expressly otherwise agreed, Levi9 shall not be required to convert data.
- 24.2 Levi9 does not warrant that the software shall operate without interruption, errors or other defects or that all errors or other defects shall be corrected.
- 24.3 Levi9 may charge the repair costs according to its usual rates if there have been operating errors or improper use on the Client's part or other causes not imputable to Levi9 or

if the software has been modified by others besides Levi9. Maintenance shall not include fixing mutilated or lost data.

- 24.4 If a maintenance agreement has been concluded, Levi9 shall provide improved versions of the software to the Client when they become available. Levi9 shall no longer be required to fix any errors in the old version or to provide support regarding an old version three months after an improved version becomes available. In providing a version with new options and functions, Levi9 may require the Client to enter into a new agreement with Levi9 and to pay a new fee for this version being made available.
- 24.5 If the Client does not enter into a maintenance agreement with Levi9 at the same time that the agreement to provide the software is concluded, Levi9 cannot be required to enter into a maintenance agreement at a later time.
- 24.6 In the absence of an expressly agreed invoicing schedule, all amounts pertaining to maintaining software shall be owed before the maintenance period commences.

#### **Article 25 Software from Levi9's supplier or open source software**

- 25.1 If and insofar as Levi9 provides software from third parties or open source software to the Client, those third parties' terms and conditions and the applicable (End) User License agreement(s) to the open source software shall replace the provisions in these Terms and Conditions and shall apply with regard to that software, provided that Levi9 notifies the Client in writing. The Client shall accept the aforementioned third-party terms and conditions and the applicable (End) User License agreement(s) to the open source software. These terms and conditions shall be available for the Client's inspection at Levi9's and Levi9 shall send these terms and conditions free of charge to the Client at its request. If and insofar as the aforementioned third-party terms and conditions and the applicable (End) User License agreement(s) to the open source software are deemed or declared inapplicable to the relationship between the Client and Levi9 for whatever reason, the provisions in these General Terms and Conditions shall fully apply.

#### **SECONDMENT**

In addition to the general provisions of these General Terms and Conditions and the special provisions included in the chapter "Services", the provisions set forth in this chapter "Secondment" shall apply if Levi9 makes an employee available to the Client in order to have this employee perform work under the Client's supervision, management and/or direction.

## **Article 26 Secondment**

- 26.1 There shall be secondment within the meaning of these Terms and Conditions if Levi9 makes an employee (hereinafter: the “Seconded Employee”) who meets the agreed quality requirements, available to the Client on assignment (hereinafter: “Assignment”) of the Client in order to have this Seconded employee perform work (hereinafter: “Work”) under the Client's supervision and direction. A separate assignment confirmation (hereinafter: “Assignment Confirmation”) will be concluded for every Seconded Employee.
- 26.2 The period during which the Work is performed shall be stated in the Assignment Confirmation. On each termination of the period indicated, the Assignment shall be tacitly renewed by 2 (two) months, unless the Client should wish to receive a new Assignment in respect thereof. The Client shall then reserve the right to withdraw the Assignment, observing 1 (one) month’s written notice.
- 26.3 The Seconded Employee is only made available to and will only perform Work for the Client. The Client expressly agrees that under no circumstances the Client will make a Seconded Employee available to or have him perform work for any company pertaining to the Client (within the meaning of Article 2:24a and/or c of the Dutch Civil Code), also when these companies do not use the name of the Client in their trade names, or for any third party unless agreed in writing by Levi9.
- 26.4 Levi9 shall exert reasonable endeavour that the Seconded Employee remains available for the term of the applicable Assignment, notwithstanding the provisions in Article 26.5 concerning replacement. In the event of a Seconded Employee’s illness, accident, death, dismissal or resignation, Levi9 shall take reasonable endeavors to find a suitable replacement. If the Work is suspended at the Client’s request, Levi9 shall upon the Work being resumed take reasonable endeavours to ensure that the same Seconded Employee is deployed.
- 26.5 The Client shall be entitled to request replacement of the Seconded Employee (i) if the Seconded Employee demonstrably does not meet expressly agreed quality requirements and the Client provides written notice of this to Levi9 within 3 (three) working days after the Work commences, or (ii) if the Seconded Employee experiences a long-term illness or (iii) leaves Levi9's employment. Levi9 shall immediately address the request, making it a priority. Levi9 does not warrant that replacement shall always be possible.

If replacement is not or not immediately possible, the Client's claims to further performance of the applicable Assignment as well as all claims of the Client on account of non-performance of the applicable Assignment shall be extinguished. The Client's payment obligations concerning the work performed shall continue to exist.

- 26.6 If any probation period has been agreed on, which probation period shall be stated in the Assignment Confirmation, the Parties shall be entitled to cancel the Assignment at immediate notice during this probation period, without any further mutual obligations being involved.
- 26.7 On termination of the Secondment, all documents and/or copies thereof, manuals, documents and other information materials of any nature whatsoever, obtained either directly or indirectly by one party from the other party, shall be returned to the other party, unless it concerns materials that were invoiced and paid for.

#### **Article 27 The Work**

- 27.1 On receipt of an Assignment Levi9 and the Client shall mutually determine the nature of the activities and the Client's requirements in terms of capacity, which Levi9 shall then provide accordingly. The Work shall be described in the Assignment Confirmation as shall the location at which the Work is to be performed.
- 27.2 In the event of a change in the nature or substance of the Work or the location in which the Work are being performed during the performance of an Assignment or a change in any other circumstances, Levi9 shall be entitled to determine possible new conditions and hourly or daily rates, which, provided these have been recorded in writing and signed, shall then become part of and integrate to the original Assignment Confirmation.
- 27.3 The Seconded Employee shall adhere to the rules and regulations in force at Client's in terms of working hours and the manner in which the Work is performed, unless specified otherwise in the AC. Client shall notify the Seconded Employee of or provide him with these rules and regulations upon commencement of the Work.
- 27.4 The Seconded Employee shall after consultation between the Client and Levi9 be in a position to take days' holiday or days' leave in accordance with the rules in force at Levi9. On recognized public holidays, no Work shall be performed unless otherwise agreed upon in writing.

27.5 In consultation with the Client, Levi9 shall have the right to replace a Seconded Employee by another Seconded Employee who meets the agreed quality requirements.

27.6 The responsibility for the purpose of the Work to be performed, as well as the result thereof, shall remain with the Client. Levi9 shall not accept any liability for the selection of the Employee or for the results of the work arising under the Client's supervision and direction.

## **Article 28 Price and payment**

28.1 The rates charged for the Work shall invariably be agreed between Levi9 and the Client per separate Assignment Confirmation. The rate shall apply to customary working weeks, in other words Mondays to Fridays, except on recognized public holidays, for a maximum of 8 hours per day during the customary working hours between 9 a.m. and 5 p.m. If more than eight hours are worked on a given working day or Work is performed outside the customary working hours, the following supplements shall apply (the rate for customary working hours = 100%):

- a) Sundays 12 p.m. until Fridays 12 p.m. 150%;
- b) Saturdays 0 a.m. until Sundays 12 p.m. 200%;
- c) on recognized public holidays 300%;
- d) more than eight hours on any one working day: once 8.5 hours have been worked, a supplement of 50% shall apply on top of the relevant rates for any subsequent hours worked (whether or not they have already been increased by another supplement).

28.2 Levi9 shall invoice the Client up front and at monthly intervals, unless stated otherwise in the Assignment Confirmation.

28.3 All amounts quoted shall be exclusive of travelling expenses and travelling hours of the Seconded Employee to the agreed place of work, unless otherwise agreed and set out in the AC. Travelling costs incurred for Client's benefit other than the regular costs of travelling to the agreed place of work shall be charged by Levi9 to Client separately.

28.4 Production costs, if any, involved in preparing reports, costs for the use of equipment and/or software and other costs of materials in so far as these are not paid by the Client itself, shall be charged by Levi9 to the Client by separate invoice in accordance with the provisions of these General Terms and Conditions.

## **Article 29 Intellectual property rights**

29.1 The property rights, including thereunder copyright and rights of industrial and intellectual property, with regard to software, if and in so far as this was developed by the Secoded Employee(s) of Levi9 under the Client's direction and supervision, shall be transferred to the Client after all payments owed to Levi9 with regard to the Work have been received by Levi9. All other rights shall remain with Levi9.

## **Article 30 Wage tax and national insurance/employee insurance contributions**

30.1 Levi9 shall ensure and guarantees that wage tax and national insurance/employee insurance contributions are paid for the Secoded Employee(s) in a proper and timely fashion. At the request and the expense of the Client, and after the end of any given quarter, Levi9 shall furnish an accountant's statement or a 'statement of proper payment of taxes' to the Client showing that the amounts withheld and declared for purposes of sales tax (BTW), wage tax and national insurance/employee insurance contributions are correct and that the payment of such taxes and contributions was effected in a timely fashion.

## **SALE OF EQUIPMENT**

In addition to the General Provisions in these General Terms and Conditions, the provisions set forth in this Chapter "Sale of Equipment" shall apply if Levi9 sells equipment to the Client. Insofar as the purport of the following provisions is not inconsistent with this, the term "equipment" shall also include separate equipment parts.

## **Article 31 Selection of equipment, delivery and risk**

31.1 The Client shall bear the risk of selecting the equipment purchased. Levi9 shall not warrant that the equipment is appropriate for the use intended by the Client, unless the intended uses have been clearly specified without reservation in the written purchase agreement between the Parties.

31.2 The equipment sold by Levi9 to the Client shall be delivered to the Client at the site of Levi9's warehouse. Levi9 shall deliver the equipment sold to the Client or have this delivered at a location to be designated by the Client only if this has been agreed in writing. Levi9 shall inform the Client before delivery in as timely a manner as possible of the time which it or the carrier used intends to deliver the equipment. The delivery times indicated by Levi9 shall always be indicative.

- 31.3 Equipment shall be delivered at the agreed location for the agreed purchase price. Unless expressly otherwise agreed, the equipment's purchase price shall not include the costs of transport, insurance, rigging and hoisting, leasing temporary facilities and the like.
- 31.4 The risk of loss and theft of and damage to the equipment shall pass to the Client when it is delivered to the Client. If a carrier is used for the delivery (whether or not at the Client's request or instruction), the risk of loss, theft and damage shall, however, already pass to the Client when the equipment is delivered to the carrier.
- 31.5 Levi9 shall package the equipment in accordance with the usual standards it applies. If the Client desires a specific manner of packaging, it shall bear the related additional costs. The Client shall handle the packaging released with the products delivered by Levi9 in a manner that is consistent with the applicable government regulations. The Client shall indemnify Levi9 against third-party claims based on non-compliance with such regulations.

### **Article 32 Environment requirements and installation**

- 32.1 The Client shall ensure an environment which meets the requirements specified by Levi9 for the equipment in a particular case (for example, concerning temperature, humidity, technical environment requirements and the like).
- 32.2 If the Parties have expressly agreed on this in writing, Levi9 shall install the equipment or have it installed. Any requirement by Levi9 to install equipment shall not include the requirement to install software or to convert data.
- 32.3 If Levi9 has undertaken to perform installation, the Client shall provide a suitable installation site with all necessary facilities, such as cable work and telecommunications facilities, before delivery of the equipment and follow all instructions of Levi9 necessary for the installation.
- 32.4 To enable Levi9 to perform the necessary work, the Client shall give Levi9 access to the installation site during Levi9's normal working days and hours.

### **Article 33 Guarantee**

- 33.1 Levi9 shall do its utmost to fix, to the best of its ability, any defective material and manufacturing defects in the equipment, as well as in parts delivered by Levi9 in connection with the guarantee or maintenance within a reasonable time period and free of

charge, if these have been reported, with a detailed description, to Levi9 within three months after delivery. If, in Levi9's reasonable judgment, repairs are not possible, will take too long or will entail disproportionately high costs, Levi9 shall be entitled to replace the equipment free of charge with other, similar, but not necessarily identical, equipment. The guarantee shall not include data conversion which is necessary due to repairs or replacement. All parts replaced shall be the property of Levi9. The guarantee obligation shall be extinguished if the defective material or manufacturing defects result in whole or in part from incorrect, careless or incompetent use, from external causes such as fire or water damage, or if, without Levi9's permission, the Client makes changes or causes changes to be made to the equipment or to the parts delivered by Levi9 in connection with the guarantee or maintenance. Levi9 shall not withhold such permission on unreasonable grounds.

33.2 Levi9 shall charge work and repair costs falling outside the scope of this guarantee in accordance with its usual rates.

33.3 Levi9 shall not have any obligations concerning fixing errors reported after the expiry of the guarantee period referred to in Article 30.1, unless the Parties have concluded a maintenance agreement which includes such a duty to fix.

#### **Article 34 The equipment of Levi9's supplier**

34.1 If and insofar as Levi9 provides equipment from third parties to the Client, those third parties' terms and conditions shall replace the deviating provisions in these Terms and Conditions and shall apply with regard to that equipment, provided that Levi9 notifies the Client in writing. The Client shall accept the aforementioned third-party terms and conditions. These terms and conditions shall be available for the Client's inspection at Levi9's and Levi9 shall send these terms and conditions free of charge to the Client at its request. If and insofar as the aforementioned third-party terms and conditions are deemed or declared inapplicable to the relationship between the Client and Levi9 for whatever reason, the provisions in these General Terms and Conditions shall fully apply.

#### **MAINTENANCE OF EQUIPMENT**

In addition to the General Provisions in these General Terms and Conditions, the provisions set forth in this Chapter "Maintenance of Equipment" shall apply if Levi9 and the Client have concluded an agreement for maintenance of equipment.

### **Article 35 Duration of the maintenance obligation**

- 35.1 The agreement to maintain equipment shall be entered into for the term agreed between the Parties, in the absence of which a one-year term shall apply.
- 35.2 The term of the agreement shall be tacitly extended each time by the length of the original period, unless the Client or Levi9 terminates the agreement in writing with due observance of a notice period of three months before the end of the period concerned.

### **Article 36 Maintenance**

- 36.1 The substance and scope of the maintenance services to be provided by Levi9 and any related service levels shall be recorded between the Parties in a written agreement. In the absence of such an agreement, Levi9 undertakes to do its utmost to remedy, to the best of its ability and within a reasonable time period, malfunctions which have been properly reported to Levi9 by the Client. In this Chapter, "malfunction" shall mean not meeting the equipment's specifications expressly made known by Levi9 in writing, or not meeting these specifications without interruption. A malfunction shall only exist if the Client can demonstrate it and it can be reproduced.
- 36.2 The maintenance shall be performed during Levi9's normal working days and working hours.
- 36.3 Levi9 reserves the right to suspend its maintenance obligations during the time that, in Levi9's judgment, there are circumstances at the site where the equipment is to be set up which entail risks to the safety or health of Levi9's employees.
- 36.4 Levi9 shall ensure that its expertise concerning the equipment is kept up-to-date. Levi9 shall register and record in its administration all relevant data concerning the work performed on the equipment. Upon request, Levi9 shall allow the Client to examine the data recorded.
- 36.5 Parts shall be replaced if this is necessary in Levi9's judgment to fix or prevent malfunctions. The parts replaced shall be or remain Levi9's property.

### **Article 37 Maintenance and use terms and conditions**

- 37.1 The Client shall immediately inform Levi9 after a malfunction occurs in the equipment by having one of its employees with expertise in this area draw up a detailed description of the malfunction. Levi9 shall be obliged to give access to Levi9's employees or third

parties designated by Levi9 to the site of the equipment, to provide all other necessary cooperation, and to make the equipment available to Levi9 for the maintenance work.

- 37.2 At Levi9's request, an employee of the Client with expertise in this area shall be present during the maintenance work for consultation. The Client shall be entitled to be present during all work to be performed for the Client.
- 37.3 The Client shall not be entitled to connect equipment and systems not delivered by Levi9 to the equipment sold to the Client and to install software not delivered by Levi9 on it. The Client shall be responsible for the costs of examining and remedying malfunctions which occur through connecting equipment not delivered by the Client or installing software not delivered by Levi9.
- 37.4 If, in Levi9's judgment, maintenance of the equipment requires that the equipment's connections be tested with other systems or equipment, the Client shall provide these other systems or this other equipment, as well as the relevant test procedures and data carriers, to Levi9.
- 37.5 Test material necessary for maintenance work that is not part of Levi9's normal equipment shall be provided by the Client.
- 37.6 The Client shall arrange for the technical, spatial and telecommunications facilities that are necessary to allow the equipment to operate. "Maintenance" shall expressly not include the aforementioned facilities and terminals.
- 37.7 The Client shall bear the risk of loss or theft of or damage to the equipment during the period that Levi9 has the equipment in its possession for the maintenance work. The Client shall be responsible for insuring this risk. Before the equipment is provided to Levi9 for maintenance, the Client shall ensure that a proper and complete back-up copy has been made of all software and data recorded in the equipment.
- 37.8 Levi9 shall not accept any maintenance obligations for equipment not set up in The Netherlands, unless expressly otherwise agreed in writing.
- 37.9 In the absence of an expressly agreed invoicing schedule, all amounts relating to maintenance of equipment shall be owed when the maintenance period commences.

### **Article 38 Exclusions**

38.1 Work to examine or repair malfunctions which arise from improper use of the equipment or external causes, such as defects in communication lines or in the power supply, or connections with and/or use of equipment, software or materials not covered by the agreement, shall not be part of Levi9's obligations under the agreement, and shall be charged to the Client separately at the usual rates.

38.2 The maintenance price shall not include:

- replacing consumer goods, such as, for example, magnetic storage media and printer ribbons;
- replacement costs for parts as well as maintenance services for remedying malfunctions which are caused in whole or in part by attempts to repair made by others besides Levi9;
- work to service the equipment in whole or in part;
- equipment modifications;
- moving, relocating or reinstalling equipment or work resulting from this.