

**General terms and conditions, hereinafter referred to as "Terms and Conditions", of TP Tuned B.V.**

Version: 29 October 2019

**Article 1 Definitions**

1. The following definitions apply in these Terms and Conditions:
    - a. Agreement: each agreement between TP Tuned and Client concerning the Services, for which these Terms and Conditions are incorporated;
    - b. Client: the legal entity that has concluded the Agreement with TP Tuned;
    - c. Parties: TP Tuned and Client;
    - d. Services: all services of TP Tuned noted in the Agreement;
    - e. Software: the software as a service (SaaS) named 'Reptune', made available to Client remotely through the internet, and maintained remotely, without providing a physical carrier with the software concerned to Client;
    - f. TP Tuned: TP Tuned B.V., with its registered office in Amstelveen and its principal place of business at Strawinskylaan 4117, 5th floor, Amsterdam, the Netherlands, registered with the Chamber of Commerce, entry number 63491478, together with its legal successor(s) and/or the persons or legal entities designated by it, together with the (group) companies and/or participating interest(s) that form part of this company as defined in Book 2, Section 24 (a, b and c) of the Dutch Civil Code;
    - g. Transfer Pricing Information: the information relating to local transfer pricing regulations contained in the Software (under "Knowledge") and in the transfer pricing documentation produced by the Software;
- The definitions have the same meaning in the singular and the plural.

**Article 2 - Scope**

1. These Terms and Conditions form part of and apply to all Agreements between TP Tuned and Client and all (legal) acts related thereto, including non-contractual obligations.
2. TP Tuned expressly rejects the applicability of terms and conditions applied by Client.
3. Agreements made between Client and TP Tuned that differ from the substance of these Terms and Conditions or supplement them are only valid to the extent agreed to in writing by both Parties.
4. If one or more provisions in these Terms and Conditions and/or an Agreement are invalid or should be invalidated as a whole or in part at any time, the other provisions of these Terms and Conditions and/or Agreement shall continue to apply in full. TP Tuned and Client will then agree to new provisions to replace the invalid or invalidated provisions, the purpose and the effect of the original provisions being taken into account to the maximum extent possible.
5. In the event of inconsistency between a provision in an Agreement concluded by TP Tuned and Client and a provision in these Terms and Conditions, the provision in the Agreement will prevail.
6. All Agreements are accepted exclusively by TP Tuned, even if it is the explicit or implicit intention that an assignment is performed by a specific person. Contrary to the provisions of Articles 404, 407(2) and 409 of Book 7 of the Dutch Civil Code, the persons working for TP Tuned, whether or not employed by it, shall not be personally bound, responsible or liable.
7. The following sections of these Terms and Conditions will survive expiration, termination or dissolution of the Agreement: Article 5 – Prices and payment obligations; Article 6 - Agreement term and termination (relating to termination); Article 8 - Intellectual property rights; Article 12 – Liability; Article 13 – Confidentiality; Article 14 – Data (Paragraph 5); Article 17 – Dissolution; and Article 20 - Governing law and dispute resolution.

**Article 3 - Offers and the conclusion of an Agreement**

1. All quotations issued by TP Tuned are without obligation. TP Tuned has the right to revoke quotations issued in so far as they have not yet been accepted by Client. Quotations are

valid, unless otherwise stated in the quotation, for a maximum of 14 (fourteen) days. The quotation is based on the information provided to TP Tuned by Client. TP Tuned cannot reasonably be bound by obvious mistakes and/or clerical errors in offers, quotations and Agreements.

2. An Agreement is concluded when TP Tuned has accepted such in writing or TP Tuned starts performing the Services.
3. If Client makes reservations with regard to acceptance of the quotation or makes changes to it, the Agreement will not be concluded, notwithstanding Paragraph 2 of this article, until TP Tuned has informed Client in writing that it agrees to the nature and content of these reservations or changes. Notwithstanding the provisions of Book 6, Section 225, Paragraph 2 of the Dutch Civil Code, acceptance by Client departing from the quotation or offer in minor respects also does not bind TP Tuned.
4. Agreements concluded between Client and an unauthorised representative of TP Tuned, and also oral agreements, do not bind TP Tuned until they have been confirmed to Client in writing by a representative authorised to do so on TP Tuned's behalf.
5. TP Tuned is at all times entitled to refuse an order (in part) without further explanation and without in any way being liable for any damage, for example if TP Tuned has an indication or suspicion that Client will not comply with its payment obligations and/or the Services are not available.

**Article 4 - Execution**

1. TP Tuned will make every effort to execute the Agreement with due care, as appropriate in accordance with the Agreement. All TP Tuned's work will be done on the basis of a best effort obligation, unless and in so far as TP Tuned has expressly promised a result in the written Agreement and the result concerned has been described in a sufficiently precise manner.
2. TO THE FULLEST EXTENT PERMITTED BY LAW, TP TUNED PROVIDES NO WARRANTIES ABOUT THE SERVICES, WHICH ARE PROVIDED ON AN 'AS-IS' BASIS.
3. A delivery period agreed between the Parties is never a deadline.
4. TP Tuned at all times reserves the right to deploy third parties for the work, if good performance of the work so requires. The applicability of Book 7, Section 404 of the Dutch Civil Code is expressly excluded in this case.
5. Client shall designate a contact person or contact persons who shall act on behalf of Client for the performance of the Agreement. Client's contact persons need to be qualified and have specific knowledge of the subject matter and a proper understanding of the objectives that Client wishes to achieve.
6. In the event the Parties have agreed performance of the Agreement in phases, TP Tuned is entitled to postpone the commencement of new work until the prior phase is accepted and/or paid by Client.
7. Client is solely responsible for the use of the Services. TP Tuned does not guarantee that the Services will have a specific result desired by Client.

**Article 5 – Prices and payment obligations**

1. Parties shall agree on the prices of the Services, the period during which they apply and the timing of invoicing in the Agreement.
2. The prices quoted by or on behalf of TP Tuned are exclusive of VAT, sales tax, withholding taxes, travel expenses, out-of-pocket expenses and additional expenditures ("Taxes and Expenses"). Client agrees to pay or reimburse TP Tuned for Taxes and Expenses that TP Tuned must pay based on the Services provided.
3. Prices given in presentations, brochures or price lists published by TP Tuned are indicative and do not bind TP Tuned; Client cannot derive any right whatsoever from them.
4. Payments must be made without any suspension, discount or setoff for any reason whatsoever within thirty (30) days after the invoice date.
5. If Client fails to make payment on time, Client will be in default without further notice of default being required. Should Client be in default, Client will be responsible to TP Tuned for any and all collection costs, including attorney's fees.

6. If Client is in breach of the Agreement, then, notwithstanding any payment arrangements made previously, TP Tuned is at all times entitled to demand full or partial payment at a time and in a way that is at the sole discretion of TP Tuned, as well as to suspend all its obligations under the Agreement until it has received payment, within the terms provided of Article 5, Paragraph 4, without being liable for any losses.

#### **Article 6 - Agreement term and termination**

1. The Agreement between TP Tuned and Client is concluded for an unstated period of time, unless the Parties have agreed otherwise in writing.
2. Agreements for an unstated period of time may be terminated by both Parties subject to one (1) month's notice.
3. Agreements concluded for a definite period of time will be renewed automatically on expiry of that period of time for an identical period of time as that for which the Agreement was originally concluded, unless one of the Parties has advised that it has no wish to renew in writing one (1) month before the end of the Agreement.
4. Without prior notice of default and without being in any way liable for losses or costs, and without waiving any other right, TP Tuned is entitled to suspend its obligations or to terminate the Agreement in whole or part at any point in time if:
  - a. Client becomes insolvent or there is a threat of this occurring;
  - b. Client has already applied for a suspension of payments or intends to do so;
  - c. Client no longer has freely available liquid or other funds due to attachment or other reason;
  - d. Client is dissolved or plans to be dissolved;
  - e. the ownership of Client is transferred to a third party or a third party has otherwise gained control over Client;
  - f. TP Tuned's good name and reputation is harmed, or could potentially be harmed, by the Agreement or Client's acts or omissions;
5. circumstances occur that are of such a nature that TP Tuned cannot be reasonably required to fulfil its obligations.
5. If any of the events stated in Article 6, Paragraph 4, occur(s), then all (future) claims that TP Tuned has on Client become due and payable immediately in their entirety.
6. In the case of termination of the Agreement, under no circumstances is TP Tuned bound to pay any compensation, except, in the case of termination by TP Tuned, for a pro rata refund for the remainder of the licensing period of license fees paid by Client for the Software.
7. If either Party terminates the Agreement, Client must cease the use of the Software after the notice period.

#### **Article 7 - Complaints**

1. The Services performed by TP Tuned must be carefully checked by Client for any errors, failures and/or non-conformities immediately after the time of delivery. TP Tuned must be notified in writing (which includes e-mail) of any errors, failures and/or non-conformities within fourteen (14) calendar days of delivery. When failing to do so, Client will be regarded as having accepted the Services supplied. The aforementioned notification must contain a detailed description of the errors, failures and/or non-conformities, so that TP Tuned is able to respond appropriately. Client must give TP Tuned the opportunity to investigate a complaint or arrange its investigation.
2. A complaint by a Client does not suspend its obligation to pay for the Services.
3. If Client complains in good time (see Article 7, Paragraph 1) and it is shown that these errors, failures and/or non-conformities are a consequence of an attributable failure by TP Tuned in the fulfilment of its existing obligations to Client, TP Tuned will arrange for correction of the Services without charge or provide a refund.

#### **Article 8 - Intellectual property rights**

1. TP Tuned retains all the intellectual property rights and know-how relating to the Services, including but not limited to the Software, source code, technical documentation, documents, titles, logos, articles, copy, artwork, recordings,

and/or files supplied in the context of executing the Agreement.

2. Nothing in the Agreement or these Terms and Conditions can be considered a transfer of intellectual property rights to Client.
3. Client guarantees that it will not breach the intellectual property rights of TP Tuned or – with respect to any data included in the Software – third parties, and indemnifies TP Tuned in respect of any breach of any such intellectual property rights, including comparable claims with regard to know-how, unlawful competition, etc.
4. Client shall not copy, upload, download or share content through the Software unless it has the right to do so. TP Tuned does not assume any responsibility for the content Client's users include in the Software.

#### **Article 9 - Software license and restrictions**

1. Client shall obtain a license to the Software only if expressly stated in the Agreement.
2. The mere granting by TP Tuned to representatives of Client of (limited) access to the Software shall not be considered the granting of a license.
3. A license (right of use) of the Software entitles Client to access to the Software and to application support, including the training of users designated as "Super User" and providing such users access to TP Tuned's helpdesk.
4. For the avoidance of doubt, if the Agreement between Client and TP Tuned is limited to a license of the Software, the Services do not extend beyond providing such license and shall exclude, for example, analysis of Client's data, preparation of transfer pricing documentation, transfer pricing risk assessment, monitoring of deadlines and application support to users other than those designated as "Super Users". Such services can be provided by TP Tuned upon request and under separate Agreement.
5. The license of Client is worldwide, non-exclusive, non-transferable, non-sublicensable, and strictly limited for the purpose of the Agreement and solely granted during the term of the Agreement. The use of the license in any other or additional manner shall require the prior written approval of TP Tuned. Client acknowledges that TP Tuned has no obligation and will not ship copies of Reptune programs to Client as part of the Services.
6. Client is allowed to make the Software available to group companies. Client is prohibited to make the Software available to third parties without prior written permission of TP Tuned.
7. The license shall never be deemed to be a purchase contract of the Software.
8. In the event that TP Tuned has made an offer subject to a certain amount of users, Client is obliged to pay for at least the minimum amount of users mentioned in the offer, even if the actual amount of users is lower at a certain time.
9. TP Tuned retains all ownership and intellectual property rights to the Services and Software.

#### **Article 10 – Maintenance, updates, backup**

1. TP TUNED DOES NOT GUARANTEE THAT THE SOFTWARE IS FREE OF ERRORS AND FUNCTIONS WITHOUT INTERRUPTION. TP TUNED MAY AT ITS SOLE DISCRETION DECIDE TO USE TEMPORARY SOLUTIONS, INCLUDING LIMITATIONS IN THE SOFTWARE, IN WHICH EVENT CLIENT IS NOT ENTITLED TO ANY REIMBURSEMENT.
2. The Software is continuously improved. TP Tuned aims to inform Client's users designated as Super Users about updates. Regular updates of the Software will be included in the price of the Software.
3. If TP Tuned introduces optional new features to the Software, TP Tuned may charge additional license fees to the Client, if Client enables these features.
4. TP Tuned may release features that are still being tested and evaluated. Such features will be marked as "beta" and may not be as reliable as Reptune's other features. TP Tuned is always entitled to cease support for prior versions of the Software.
5. Any agreements regarding service level shall only be expressly agreed in writing.
6. Client is solely responsible for their use of the Software. Client is obliged to have adequate hardware, software and internet connections in order for the Software to operate

properly. TP Tuned can demand minimum specifications in relation to such hardware, software and internet connections.

7. TP Tuned shall provide backup, contingency and recovery services. Client is nevertheless responsible for its own backups. TP Tuned is never responsible for data loss.

#### **Article 11 - Force majeure**

1. In addition to that which is understood in law and case law, in these Terms and Conditions the term force majeure means any circumstance independent of the will of TP Tuned that makes fulfilment of the Agreement impossible permanently or temporarily. The term force majeure in any event means the failure on the part of TP Tuned to perform (on time) as a result of imminent risk of war, war and kindred risks, riot, fire, flooding, earthquake, water damage, factory occupation, import and export restrictions, government measures, disruptions in the supplies of energy, the inability to fulfil the guarantee, lack of staff, strikes, staff sickness, late delivery or unsuitability of raw and other materials, attributable failures or wrongful conduct of TP Tuned's subcontractors or third parties engaged by TP Tuned or solvency or liquidity problems on the part of TP Tuned.
2. During the period that the force majeure persists, TP Tuned may suspend its obligations under the Agreement.

#### **Article 12 - Liability**

1. Client guarantees the correctness of the information provided to TP Tuned for the purposes of executing the Agreement and will always provide all the required information in good time. The Services are provided based on the information provided by Client. Client is responsible for verifying the information as contained in the Services.
2. Client shall be responsible for the contents and timely filing of transfer pricing documentation as well as any other compliance required by applicable transfer pricing regulations.
3. Neither TP Tuned, nor its staff, nor third parties engaged by TP Tuned is or are liable for any damage for whatever reason and of whatever kind suffered by Client or any third party in connection with the delivery of Services, the use of Services, the possession of Services or defects in Services supplied, including inadequate fulfilment of the obligation to repair or resupply, all this except for a deliberate act or deliberate recklessness on the part of TP Tuned.
4. IF AND IN SO FAR AS ANY LIABILITY SHOULD EXIST FOR TP TUNED UNDER PARAGRAPH 1, IT IS LIABLE ONLY FOR DIRECT DAMAGE. NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS (EXCLUDING FEES UNDER THE AGREEMENT), DATA, OR DATA USE.
5. TP TUNED'S LIABILITY FOR DIRECT DAMAGE IS IN ANY EVENT LIMITED IN ALL CASES TO THE OBLIGATION TO RESUPPLY OR TO THE OBLIGATION TO PAY THE AVERAGE INVOICE AMOUNT RELATING TO THE AGREEMENT OVER THE LAST THREE (3) MONTHS PRECEDING THE DAMAGING FACT, WITH A MAXIMUM OF THE AMOUNT THAT TP TUNED'S INSURANCE PAYS OUT WHERE APPLICABLE (PLUS THE EXCESS AMOUNT), ALL AT TP TUNED'S DISCRETION. ANY DAMAGE IN CLIENT'S FAVOR AGAINST TP TUNED SHALL BE REDUCED BY ANY REFUND OR CREDIT RECEIVED BY CLIENT UNDER THE AGREEMENT AND ANY SUCH REFUND AND CREDIT SHALL APPLY TOWARDS THE LIMITATION OF LIABILITY.
6. Client agrees to indemnify TP Tuned against all claims of third parties that suffer damage in connection with the execution of the Agreement and the cause of which is attributable to a party other than TP Tuned (including its subcontractors) and against third-party claims connected with the contracts concluded between Client and those third parties.
7. Notwithstanding the provisions in Article 7 about complaints and the provisions in this article about TP Tuned's liability, the time limit or expiry period of all claims and defences in respect of TP Tuned and the third parties involved by TP Tuned in the execution of the Agreement is one (1) year or any shorter period as the law provides.

8. For the avoidance of doubt, the Transfer Pricing Information is based upon TP Tuned's experience and interpretation of information available in the public domain. Transfer pricing is a dynamic legal area which is subject to changes and interpretation. It cannot be ruled out that there is a lag between a change occurring in transfer pricing legislation and it being included in the Software, or there being deviating opinions on such information. While TP Tuned keeps the Transfer Pricing Information updated with great care, it is Client's responsibility to verify the information.

#### **Article 13 - Confidentiality**

1. The Parties are obliged to maintain as confidential all information that they acquire in connection with the Agreement or its execution.
2. The obligations of a Party regarding confidentiality shall not apply to any confidential information which (i) is or becomes generally known or available to the public at large through no act or fault of a Party or its personnel, representatives or consultants; or (ii) can be demonstrated by a Party was available to it prior to disclosure or has thereafter been furnished to it by a third party entitled to disclose the same without restrictions as to disclosure or use, not obviously making use of the fault or breach of a party that was restricted from disclosing the information; or (iii) a Party is required by law to divulge, furnish or make such information accessible, whether or not in the framework of compliance with requirements of any relevant stock exchange or regulatory or governmental body. In case of doubt, the Party in doubt shall always consult with the other Party and obtain the other Parties' opinion in writing.

#### **Article 14 – Data**

1. These Terms and Conditions do not give TP Tuned any rights to Client's data except for the limited rights that enable TP Tuned to offer the Services. Client hereby grants TP Tuned a worldwide, exclusive, irrevocable license to access, use and analyse Client Data, which may be used by TP Tuned for the purpose of improving the Services, bill and invoice Client, and to assist Client in operating the Software.
2. As the Software operates as an archive for transfer pricing data, the data is maintained until (1) TP Tuned receives a request from Client to permanently delete or return (certain) information or (2) when the Agreement is terminated or dissolved. In either case, the data will be deleted or returned per Client's request as soon as possible.
3. Client's data is only accessible to (1) users that are part of Client's account and (2) TP Tuned users designated as "Administrators".
4. Client is responsible for responding to third party requests via Client's own access to information in the Software. Client will seek to obtain information required to respond to third party requests and will contact TP Tuned only if Client cannot obtain such information despite diligent efforts.
5. If the Agreement ends, TP Tuned will provide Client access to its data for a duration of up to thirty (30) days and shall assist, if possible, with the export of data for the risk and account of Client. TP Tuned is entitled to charge fees for such assistance. TP Tuned will delete all Client's data after such thirty-day period. TP Tuned shall have no obligation to maintain or provide any of Client's data.

#### **Article 15 – Acceptable use policy**

1. TP Tuned may review Client's conduct and content for compliance with these Terms and Conditions.
2. Client's users shall safeguard their credentials to access the Software. They shall not share their credentials, give others access to their account or log in with any account but their own.
3. Client will prevent unauthorised use of the Software by its users and terminate any unauthorised use of or access to the Software. Client will promptly notify TP Tuned of any unauthorised use of or access to the Software.
4. Client warrants that it will never remove or bypass (i) technical measures intended to protect the Software or have such technical measures removed or bypassed and (ii) logo's, trademarks and tradenames and/or other information in the Software.
5. Client's users shall not breach or otherwise circumvent any security or authentication measures or interfere with or

disrupt any user, host, or network, for example by sending a virus, overloading, flooding, spamming, or mail-bombing the Software.

6. Client's users shall not sell the Software unless specifically authorised to do so.
7. Client's users shall not violate the law in any way, including storing, publishing or sharing material that's fraudulent, defamatory or misleading or violate the privacy or infringe the rights of others.

#### **Article 16 – Privacy and data security**

1. Depending on the Services agreed, TP Tuned may be either a controller in the sense of Article 4(7) of the General Data Protection Regulation (EU) 2016/679 (hereinafter: 'GDPR') or a processor in the sense of Article 4(8) of the GDPR.
2. Where applicable, TP Tuned and Client shall enter into a separate data processing agreement and/or TP Tuned will provide Client with the privacy policy separately.
3. In the event of deviations or inconstancies between the data processing agreement and/or the privacy policy and these Terms and Conditions and the Agreement, the Agreement and these Terms and Conditions will prevail.
4. Client indemnifies TP Tuned and holds TP Tuned harmless against claims of persons whose personal data is recorded or processed in the context of the Services, unless Client proves that the facts on which a claim is based are attributable to TP Tuned.
5. Client is fully responsible for the data that TP Tuned and/or Client controls or processes in relation to the Services and Client warrants that the content, use, control and/or processing of the data are not unlawful and do not infringe any rights of third parties. Client indemnifies TP Tuned and holds TP Tuned harmless against any claim of a third party instituted for whatever reason in connection with this data or the performance of the Agreement.

#### **Article 17 - Dissolution**

1. If Client fails to execute the Agreement properly or a deadline in the execution of an Agreement is exceeded, as a result of which in TP Tuned's opinion it is established that Client will not execute the Agreement or will not do so properly, TP Tuned, without prejudice to its other rights, has the right to dissolve the Agreement immediately as a whole or in part, without further notice of default by simple notice to Client.
2. TP Tuned is also entitled to dissolve the Agreement with immediate effect, without observing any notice period or paying any compensation for damage, where (in respect of or in the name of) Client: a petition has been filed for (temporary) court protection from creditors or bankruptcy or when Client has actually been granted court protection from creditors or bankruptcy; the business has been closed down or if the company is in liquidation; any necessary permits have been lost, (a part of) the business property or items intended for the execution of the Agreement has or have been seized; a (legal) merger takes place; a substantial part of the control is lost to a third party.
3. If the cases referred to above under Paragraphs 1 and/or 2 occur, TP Tuned's claims on Client are immediately payable in full.
4. If TP Tuned dissolves the Agreement, Client must immediately cease the use of the Software.
5. Dissolution as referred to in this article will not have the consequence that rights of TP Tuned, which in TP Tuned's reasonable opinion are by their nature intended to remain in force following dissolution, will end.

#### **Article 18 - Transfer of rights and obligations**

1. Client is not entitled to transfer any right arising from the Agreement to third parties without TP Tuned's prior written consent. In addition to effect under the law of obligations, the limitation of transferability also has property law effect as referred to in Book 3, Section 83, Paragraph 2 of the Dutch Civil Code. Client gives TP Tuned the right in advance to transfer the rights arising from the Agreements to third parties as a whole or in part.

#### **Article 19 – Waiver**

1. No failure by TP Tuned to insist upon strict compliance by Client with any of the terms, provisions or conditions of the

Agreement, in any instance, shall be construed as a waiver or relinquishment of TP Tuned's rights to insist upon strict compliance in the future.

#### **Article 20 - Governing law and dispute resolution**

1. All Agreements to which these Terms and Conditions apply and the obligations and disputes arising from them are governed exclusively by Dutch law, even if an obligation is fulfilled as a whole or in part abroad or if a party involved in the legal relationship has its place of business there. The applicability of the Vienna Sales Convention is excluded.
2. All disputes with Clients based in the European Union resulting from Agreements, or contracts that may be the consequence thereof, will be submitted exclusively to the competent court of the district of Amsterdam, in the Netherlands.
3. All disputes with Clients based outside the European Union resulting from Agreements, or contracts that may be the consequence thereof, will be resolved in accordance with the Arbitration Regulations of the Netherlands Arbitration Institute by one arbitrator who will be appointed according to the list procedure, the place of arbitration being Amsterdam, in the Netherlands and the proceedings being conducted in English, unless TP Tuned chooses to institute proceedings in the country in which Client is based and without prejudice to the right of the Parties to take interim measures.