

Construsoft

Terms & Conditions for Professional Services

Subject to the express terms of any other valid agreement you (“**Customer**”) have with Construsoft, Construsoft’s provision of Professional Services are governed by these Terms and Conditions for Professional Services (“**Terms**”). “**Construsoft**” means Construsoft Group B.V. and/or its affiliates identified in the Scope of Work (Construsoft and Customer may collectively be referred to herein as “**parties**” or individually as a “**party**”). Construsoft agrees to furnish the Professional Services further to these Terms that include the terms and conditions of any orders, quotations, statements of work, scopes of work, or other similar documents for the provision of Professional Services by Construsoft that references these Terms and is accepted by Construsoft in writing (collectively referred to herein as the “**Scope of Work**”, “**SOW**” or “**Professional Services**”).

1. Professional Services. Construsoft agrees to use commercially reasonable efforts to render the Professional Services described in the SOW (the “**Professional Services**”) by the delivery dates specified therein, if any. Any deliverables provided to Customer as part of the Professional Services will be deemed “**Deliverables**”. The parties may execute additional SOWs describing Professional Services and referencing these Terms. Each accepted SOW will be interpreted as a single set of Terms, independent of other orders and/or SOWs. Construsoft quotations are non-binding unless otherwise expressly stipulated in writing and quotes are accepted as valid and binding when confirmed by Construsoft in writing. Accepted quotations cannot be canceled without the prior written consent of Construsoft.

2. Changes to Scope of Professional Services. If Customer desires changes to an SOW, Customer will submit a written request to Construsoft detailing the proposed changes. Upon receipt of Customer’s request, or if Construsoft desires changes to an SOW, Construsoft shall agree to an amendment to the SOW, change order, or similar document (referred to herein collectively as the “**Change Document**”) detailing the changes, any fee adjustments required as a result of such changes, any adjustments to the delivery schedule required as a result of such changes, and any other necessary adjustments. If Customer and Construsoft are not able to agree to the terms of the Change Document, the initial SOW will remain unchanged.

3. Payment. Unless otherwise specified in the applicable SOW, the following shall apply. Customer will pay Construsoft its customary rates for Professional Services monthly based upon actual time spent. Customer agrees to reimburse Construsoft for pre-approved travel, lodging and meal expenses incurred in the course of performing the Professional Services at any location other than Construsoft’s site. Construsoft will invoice Customer for expenses incurred and at Customer’s request and expense Construsoft will provide copies of receipts for which charges are incurred. All payments are non-refundable and shall be made in EUR (euro) (or such other currency specified in a SOW) within thirty (30) days from the date of Construsoft’s invoice. Customer will be responsible for all sales, service, and value added taxes, withholdings, duties and levies in connection with the Professional Services (excluding taxes based on the net income or profits of Construsoft or any franchise tax imposed on Construsoft). Any late payments shall be subject to a service charge equal to 1.5% per month of the amount due or the maximum amount allowed by law, whichever is less.

4. Termination. Either party may terminate these Terms or any SOW if the other party: (a) fails to cure any material breach of these Terms within thirty (30) days after written notice of such breach; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such part (and not dismissed within sixty (60) days thereafter). Following termination, Sections 5 (*License and Ownership*), 7 (*Limitation of Remedies and Damages*), 8 (*Confidential Information*), 9 (*Customer Reference*), 10 (*Export Compliance*) and 11 (*General Provisions*) will survive. Section 3 (*Payment Terms*) will survive with respect to payments earned prior to termination.

5. License and Ownership

5.1 Customer Materials. Customer agrees to provide Construsoft with reasonable access to and a limited right to use Customer technical data, computer programs, files, documentation, and/or other materials (“**Customer Materials**”), resources, personnel, equipment or facilities to the extent such access is necessary for the performance of Professional Services. Customer will be responsible for, and assumes the risk of any problems resulting from the content, accuracy, completeness, competence or consistency of Customer Materials or its personnel. To the extent that Customer does not timely provide the access, quality, level of detail and/or scope required for Construsoft to perform the Professional Services

or deliver the Deliverables, Construsoft shall be excused from performance until such items/access are provided or the applicable deficiencies corrected. Customer owns and will retain ownership (including all intellectual property rights) in the Customer Materials. Customer grants to Construsoft a royalty-free, non-exclusive license to access and use the Customer Materials (including through subcontractors) as required for Construsoft's performance of the Professional Services.

5.2 Deliverables. Subject to Section 5.3 (*Assignment of Ownership to Customer*), Construsoft hereby grants Customer a perpetual, worldwide, royalty-free, non-exclusive license to use, copy, modify, or develop derivative works of the Deliverables but only for internal purposes and otherwise in accordance with the description of Customer's use and any restrictions set forth below or in the applicable SOW. Construsoft owns and will retain ownership (including all intellectual property rights) in and to the Deliverables (excluding any Customer Materials) and any modifications, improvements and derivative works thereof (including any such materials to the extent incorporating any ideas, feedback or suggestions of Customer ("**Feedback**"). Customer acknowledges that Construsoft is free to exploit, use, license and distribute, any Feedback provided to Construsoft as it sees fit, without obligation of compensation or attribution.

5.3 Assignment of Ownership to Customer. If the parties have agreed that Construsoft will assign ownership of any portion of the Deliverables to Customer, the relevant SOW must expressly set forth the possibility and terms and conditions regarding such assignment.

5.4 Construsoft Product Enhancements and Modifications. Notwithstanding anything in these Terms or any SOW to the contrary, any enhancements or other modifications to any of Construsoft's commercially available products and/or Professional Services that are developed by Construsoft as part of the Professional Services shall be owned by Construsoft and Customer shall have no right, title, or interest therein; provided, that if Construsoft has granted to Customer a license or access to use such commercially available products and/or Professional Services under a written agreement, then Customer's rights under such agreement shall also extend and apply to any enhancements and modifications so made by Construsoft. Other than Customer Materials, Construsoft owns all computer programs, utilities and intellectual property which aid Construsoft in performing the Professional Services or which are produced as a result of the Professional Services.

5.5 Other Agreements. Construsoft and Customer may have entered into one or more separate agreements under which Construsoft supplies, licenses, or otherwise make available certain products and/or Professional Services to Customer, including updates and enhancements to that software. The delivery and use of any such products and/or professional services is governed by the terms of such other agreement and not these Terms, and even if listed in a SOW such products and/or Professional Services shall not be considered a Deliverable hereunder.

6. Limited Warranty and Disclaimer.

6.1 Construsoft will perform the Professional Services and deliver the Deliverables in a professional and workmanlike manner and in compliance in all material respects with all applicable laws, rules, and regulations. Construsoft will at its choice, as its sole liability and obligation to Customer for failure to provide Professional Services or Deliverables meeting this warranty, (a) re-perform the non-conforming Professional Services, or (b) re-deliver the non-conforming Deliverables at no additional cost to Customer if notified of the non-conformity within thirty (30) days of delivery of the applicable Professional Service or Deliverable, or if Construsoft determines such remedies to be impracticable within a reasonable period of time or (c) terminate the applicable Statement of Work and refund the portion of fees attributable to such non-conforming Professional Services or Deliverables. EXCEPT FOR THE FOREGOING LIMITED WARRANTY, CONSTRUSOFT DOES NOT MAKE ANY OTHER REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND OR NATURE, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, OR ARISING BY STATUTE, CUSTOM, COURSE OF DEALING OR TRADE USAGE, WITH RESPECT TO THE PROFESSIONAL SERVICES AND DELIVERABLES. CONSTRUSOFT SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

6.2 Construction Model. If the Deliverables include a "**Construction Model**," which is a 3D representation of a construction project including, but not limited to, some or all of the following elements: building components, construction equipment, and site components, Customer agrees and acknowledges that any Construction Model is developed for the sole use of Customer and based on specifications provided by the Customer (the "**Specifications**"). Customer will be responsible for, and assumes the risk of, any problems resulting from the content, accuracy, or completeness of the Specifications. The Construction Model will not be used for any project other than as specified by the Statement of Work. If the Construction Model is being used by Customer as part of an effort to generate construction documents, as-built construction drawings, or "shop" drawings, Construsoft accepts no liability and/or responsibility for such construction documents, as-built construction drawings, or shop drawings. Any use of, or reliance on, a Construction Model by any third party will be at their sole risk and

without liability to Construsoft. If Customer discloses the Construction Model to any third party, Customer shall to the fullest extent permitted by law, defend, indemnify and hold harmless Construsoft for any suit, claim, action, damage and/or liability brought against Construsoft by any third party arising from the Specifications, construction documents, as-built drawings, shop drawings, or the development, delivery and/or use of all or any part of the Construction Model by Customer and/or by any such third party. Construsoft makes no representations regarding the Construction Model's compliance with applicable building and construction codes or regulations. The Construction Model does not constitute an approved construction document, as-built drawing or shop drawing. Customer will consult with its local building authority to confirm adherence with applicable building codes and/or regulations. Before beginning construction, Customer will have a licensed architect and/or trade-appropriate engineer sign off on the Construction Model and all construction documents, drawings, Specifications and/or models.

7. Limitation of Remedies and Damages.

NEITHER PARTY WILL BE LIABLE FOR ANY LOSS OF USE, LOSS OF DATA, INTERRUPTION OF BUSINESS, LOST PROFITS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR RELATED TO THE PROFESSIONAL SERVICES REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY, OR OTHERWISE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. IN NO EVENT WILL CONSTRUSOFT'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO PERFORMANCE OF THE PROFESSIONAL SERVICES EXCEED THE NET AMOUNT CONSTRUSOFT HAS ACTUALLY RECEIVED FROM CUSTOMER UNDER THE SOW APPLICABLE TO SUCH CLAIM. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT. THIS SECTION 7 DOES NOT APPLY TO EITHER PARTY WITH RESPECT TO ITS BREACH UNDER SECTION 8 (CONFIDENTIAL INFORMATION) OR TO CUSTOMER WITH RESPECT TO ANY CLAIM ARISING AS A RESULT OF CUSTOMER'S VIOLATION OF LICENSE RESTRICTIONS APPLICABLE TO THE DELIVERABLES UNDER SECTION 5.2 (DELIVERABLES), OR ITS INDEMNITY OBLIGATIONS UNDER SECTION 6.2 AND 10. THE PARTIES AGREE THAT THE LIMITATIONS SPECIFIED IN THIS SECTION 7 WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THESE TERMS IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

8. Confidential Information.

8.1 Confidential Information. Each party ("**Receiving Party**") agrees that all code, inventions, know-how, business, technical and financial information it obtains from the disclosing party ("**Disclosing Party**") constitute the confidential property of the Disclosing Party ("**Confidential Information**"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure. Any software, documentation or technical information provided by Construsoft (or its agents) and these Terms and any quotations, and SOWs will be deemed Confidential Information of Construsoft without any marking or further designation. Except as expressly authorized herein, the Receiving Party will hold in confidence and not use or disclose any Confidential Information. The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party shall be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have in accordance with applicable law.

8.2 Exclusions. The Receiving Party's nondisclosure obligation will not apply to information which the Receiving Party can document: (a) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (b) is or has become public knowledge through no fault of the Receiving Party; (c) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; (d) is independently developed by employees of the Receiving Party who had no access to such information; or (e) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party).

8.3 Use and Protection of Confidential Information. The Receiving Party may use the Confidential Information of the Disclosing Party only in pursuance of its business relationship with the Disclosing Party under these Terms and the applicable SOW. Except as expressly provided hereunder, the Receiving Party will not disclose Confidential Information of the Disclosing Party to anyone without the Disclosing Party's prior written consent. The Receiving Party will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of the Disclosing Party's Confidential Information, including, at a minimum, those measures it takes to protect its own Confidential Information of a similar nature. The Receiving Party will restrict the possession, knowledge and use of the Confidential Information to its employees, contractors, legal and financial

advisors who (i) have a need to know such Confidential Information in connection with the parties' business relationship, and (ii) have executed written nondisclosure agreements obligating them to protect the Confidential Information.

8.4 Legally Required Disclosure. The Receiving Party may disclose Confidential Information to the extent reasonably required to comply with court, administrative, or binding orders of governmental entities, provided that the Receiving Party gives prompt notice to the Disclosing Party of the receipt of the order and cooperates fully in any effort to obtain an order preserving the confidential nature of the Confidential Information.

9. Customer Reference

Customer agrees that upon execution of these Terms, Construsoft may add Customer to Construsoft's publicly disclosed customer list (which may include use of Customer's name and logo in customer lists on Construsoft's website and marketing materials). Except as set forth in this Section 9, neither party may use the other party's name in advertisements nor otherwise publicly disclose the terms and content of these Terms without the other's prior written consent.

10. Export Compliance.

Customer is responsible for complying with all applicable export and import regulations and obtaining all necessary export and import licenses or permits for the direct or indirect export or import of any Deliverable. Customer hereby acknowledges and agrees that Construsoft technology, software, products, and/or proprietary information that may be used in the creation of Deliverables and incorporated therein are subject to the U.S. Export Administration Regulations and were exported from the United States, if at all, in accordance with those regulations. Therefore, if applicable, Customer shall comply strictly with all U.S. export control laws and regulations applicable to the Deliverables, and shall not export, re-export, transfer, divert or disclose any such Deliverables, or any direct product thereof, to any destination restricted or prohibited by U.S. export control laws, or to any national or resident thereof. Customer will defend, indemnify and hold Construsoft harmless against any liability (including attorneys' fees) arising out of Customer's failure to comply with the terms of this paragraph. Customer's failure to comply with any term of this paragraph will constitute a material breach hereof and entitle Construsoft to immediately terminate these Terms and any associated SOW in addition to any other remedy available at law or equity. Customer's obligations under this paragraph will survive the termination of these Terms or any SOW.

11. General Provisions

11.1 Governing Law. Unless expressly otherwise set forth in an SOW, these Terms and any dispute, claim or controversy arising therefrom shall be governed by the laws of the applicable location set forth below, unless expressly prohibited by local law, in each case without reference to "conflict of laws" principles:

If Customer is domiciled in: United States; Governing Law: California and applicable United States federal law. Courts having exclusive jurisdiction: Federal and California state courts located in Santa Clara County, CA

If Customer is domiciled in: Rest of World; Governing Law: The Netherlands. Courts having exclusive jurisdiction: Competent Courts of Amsterdam, the Netherlands

Any suit or proceeding arising out of or relating to these Terms shall be commenced in such jurisdiction, and each party irrevocably submits to the jurisdiction and venue of such courts. The United Nations Convention on Contracts for the International Sale of Goods will not apply. No dispute or legal action arising under these Terms may be brought by either party more than one (1) year after such cause of action accrued, except that an action for nonpayment may be brought within two (2) years of the date of the applicable invoice.

11.2 Independent Contractors. Each party is an independent contractor of the other and neither is an employee, agent, partner or joint venture of the other. Neither party shall voluntarily or involuntarily bind nor attempt to bind the other to any contract or to the performance of any obligation. Neither party may represent to third parties that it has any right to enter into any obligation on the other's behalf. The parties hereby agree that there are no third-party beneficiaries of these Terms.

11.3 Assignment; Binding Effect. Neither party shall assign these Terms without the advance written consent of the other party, except that Construsoft may assign these Terms to an affiliate or in the event of a merger, reorganization, acquisition or other transfer of all or substantially all of Construsoft's assets or voting securities. These Terms will otherwise be binding upon and inure to the benefit of the parties and their successors and permitted assigns.

11.4 Notices. Any notice, report, approval or consent which may be or is required to be given under these Terms shall be in writing to the address(es) specified in the SOW, and shall be deemed to have been received after a copy of such notice, report, approval or consent is sent to the relevant other party by means of an electronic message: (a) when delivered personally, (b) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid,

or (c) one (1) day after having been sent by a commercial overnight carrier with written verification of receipt. Either party may change its notice address by written notice to the other. In addition, any notice to Construsoft shall also include a copy to: Construsoft Group BV, Attention: Legal Counsel, Important Legal Notice, Hengelder 16, 6902 PA Zevenaar, the Netherlands.

11.5 Force Majeure. Except for payment obligations, neither party will be liable to the other for failure to perform its obligations to the extent caused by an event beyond the reasonable control of such party, including, without limitation, government regulations or orders, outbreak of a state of emergency, acts of god, acts of terrorism, blockade, war, warlike hostilities, civil commotion, riots, epidemics, fire, natural disasters, strikes, lockouts, failure or diminishment of power or of telecommunications or data networks or Professional Services, or refusal of approval or a license by a government agency, or any other similar cause or causes, provided that, to the extent feasible, the affected party promptly notifies the other of such occurrence and makes its commercially reasonable efforts to eliminate the effect thereof.

11.6 Waivers. Any waiver by either party of any breach of these Terms, whether express or implied, will not constitute a waiver of any other or subsequent breach. No provision of these Terms will be waived by any act, omission or knowledge of a party or its agents or employees except by an instrument in writing expressly waiving such provision and signed by a duly authorized officer of the waiving party. If any provision of these Terms is adjudicated by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that these Terms will otherwise remain in full force and effect.

11.7 Headings. The headings contained in these Terms are for reference purposes only and shall not affect in any way the meaning or interpretation of these Terms.

11.8 Official Language. The official language of these Terms is English. If there is a conflict between versions of these Terms in any other language, the English language version shall prevail.

11.9 Amendments. No waiver, modification, or addition to these Terms, or any assignment of Customer's rights or obligations under an SOW shall be valid or binding on Construsoft unless in writing and signed by an authorized Construsoft representative.

11.10 Independent Activities. Customer acknowledges that nothing in these Terms will prohibit Construsoft or from providing products and Professional Services that are similar to or compete with the Professional Services and Deliverables provided that Construsoft does not violate any of its confidentiality obligations under these Terms in connection with such activities.

11.11 Order of Precedence. *In case of any inconsistency, conflict, or ambiguity among these Terms, an SOW, or any related agreements, the documents shall govern in the following order: (a) these Terms; (b) mutually executed Change Documents to an SOW; (c) the SOW; (d) other documents expressly referenced in a Change Document and/or the SOW and (e) the Order Form and any terms and conditions referred therein. Among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Information identified in one document and not identified in another shall not be considered a conflict or inconsistency.*

11.12 Counterparts. The SOW may be executed in any number of counterparts, each of which will be considered an original and all of which when taken together will constitute a single fully-signed original. Facsimile and other electronic means of signatures on the SOW are binding.