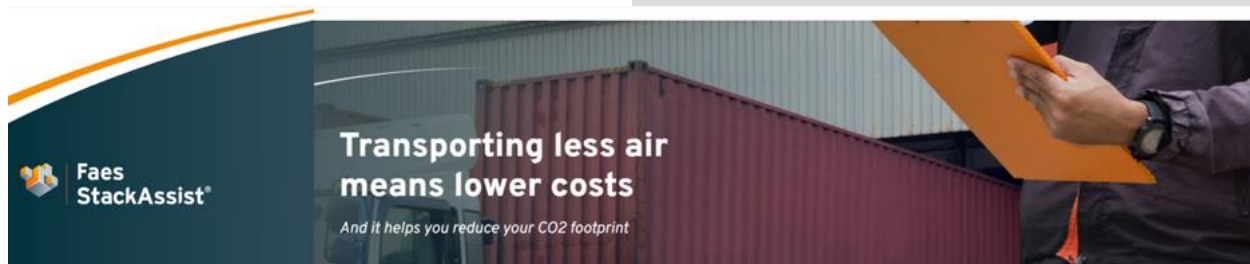


# General Terms & Conditions for Software-as-a-Service



**Date :** 16-July-2024

**Version:** 2024.02

## DEFINITIONS

In these general terms and conditions the following definitions have the following meaning:

**Agreement:** any agreement entered into between Faes and the Customer;

**Appendix:** an appendix to the Agreement;

**Customer:** you, as a legally competent corporate entity contracting with Faes;

**Customer Affiliates:** the Customer's company group partners, cooperative partners, consultants, suppliers, vendors and other contractors;

**Faes:** FPC B.V., a Dutch company with limited liability, with its address at Hamelendijk 2 (5541 RA) Reusel, the Netherlands, registered with the Dutch Chamber of Commerce under number 59361514;

**Faes Affiliates:** other companies in the Faes group, cooperative partners and contractors to Faes;

**GTC:** the last version of these general terms and conditions;

**Order Data:** each transaction data produced by the Customer;

**SaaS-service:** Software-as-a-Service;

**Service:** the StackAssist online software service provided as a SaaS-service, including software, online support functions and/or instructions provided by Faes;

**Service Support:** the support offered by Faes to the Customer aimed at solving problems experienced by the Customer relating to the use or the functionality of the Service;

**StackAssist Data:** specific data added by Faes to transport information provided by the Customer in connection with the Service;

**Subscription:** a non-exclusive, non-transferable, non-pledgeable, non- sublicensable right to access and use the Service world-wide within the scope of the Customer's normal internal business operations, granting the Customer a right to access and use the Service;

**Subscription Fee:** the fee the Customer pays to Faes for the use of the Service.

## 1. GENERAL

- 1.1 These GTC, shall apply to any offer of Faes, any Agreements concluded with Faes and the provision and use of the Service, unless otherwise agreed in writing between the parties.
- 1.2 The applicability of any general terms and conditions of the Customer is hereby expressly excluded.
- 1.3 The Agreement shall consist of a subscription for the Service, these GTC and any Appendices. In the event of any conflict, discrepancy, error or omission the terms of the subscription shall take precedence over the GTC.
- 1.4 By electronically accepting or signing in writing the Agreement, or by other means taking the Service into use, the Customer acknowledges to be bound in full by the terms and conditions of the Agreement, including all conditions for the use of the Service, and the GTC. It is the obligation of the Customer to make any users of the Service under the control of the Customer aware of all

and any StackAssist rights and obligations for the use of this Service as defined in the Agreement. Such users are considered bound by the Agreement and the Customer shall be responsible for all any use of the Service by such user.

- 1.5 Deviations from and/or additions to these GTC apply only if they have been agreed by Faes in writing and for the Agreement in relation to which the deviation and/or addition was made.
- 1.6 If any of the provisions of an Agreement prove to be void or voidable, the Agreement shall continue to apply. The parties will consult to agree on a new provision to replace the void/voidable provision. This new provision must be in accordance with the purpose and purport of the void or voidable provision.
- 1.7 If at any time Faes does not (immediately) exercise its rights under an Agreement, this does not mean that Faes has waived its rights and this will not affect its right and ability to exercise its rights in the future.

## **2. DURATION**

- 2.1 These GTC will apply from the earliest of:
  - (a) the Customer's initial use of the Service, or
  - (b) the Customer's ordering of the Service; or
  - (c) Faes and the Customer entering into an Agreement regarding the Service.
- 2.2 The term of the Agreement shall be one year, unless otherwise defined in the Agreement. After the initial term of one year the Customer and Faes each have a right to cancel the Agreement at a month's notice by the end of a month, unless otherwise agreed in writing, but in no event shall the notice period be shorter than one month. Cancellation shall be in writing. If neither party terminates the Agreement it will continue automatically for subsequent terms of one year.
- 2.3 Faes will never be liable for any compensation due to termination based on this clause.

## **3. SUBSCRIPTION**

- 3.1 Subject to the Agreement, including (i) the scope and price of the Service as defined in the Agreement, and (ii) these GTC, Faes offers to the Customer a Subscription.
- 3.2 The Customer Affiliates can be given temporary access to the Service to carry out integration work by prior written permission of Faes. Unless otherwise agreed in writing, Customer Affiliates may not use the Service for their own company and/or benefit and may not utilise the Subscription permanently or as part of their daily operations. The Customer is responsible to Faes for all activities of Customer Affiliates to the same extent as if such activities had been undertaken by the Customer itself.
- 3.3 If the Subscription is limited to a certain number of users, the Customer shall ensure that each user states his/her personal log-in details when accessing the Service. No more than one user may use the same login details.
- 3.4 The Customer may not sell services or information, wholly or partly generated by use of the Service, to any unauthorised third party – including a Customer Affiliate – or give such third party access to the Service for similar purposes, without Faes's prior written consent.

#### **4. SERVICE**

- 4.1 The Service is offered by Faes to the Customer as a SaaS-service subject to the Subscription terms defined in the Agreement, provided Customer's payment of fees as set out in the Agreement. On-site assistance and other consulting services may be contracted as separate services subject to a separate agreement.
- 4.2 The Service and other software – if applicable – will be available to the Customer within a reasonable amount of time once Faes has approved the Customer's ordering of the Service and Faes' acceptance of the Agreement.
- 4.3 The Service is subject to continuous changes, development and updates, whereas the Service's functionality and infrastructure will evolve and change, including introduction or decommissioning of new functionality, third-party software or data, from time to time at the sole discretion of Faes. Customer's sole remedy from such changes is limited to the termination of the Service. Proportional part (by duration) of pre-paid Subscription Fees may only be returned to the Customer subject to substantive lack of functionality in the Service that Faes has failed to resolve subject to a 60 days' remedy period after receiving written notice from the Customer.
- 4.4 Faes may temporarily decommission the Service or its website and systems in whole or in part for preventive, corrective or adaptive maintenance or other forms of service. Faes will not make the decommissioning last longer than necessary.
- 4.5 If agreements have been made about a service level, the availability of the Service, website and systems is always measured in such a way that the decommissioning announced in advance by Faes due to preventive, corrective or adaptive maintenance or other forms of service, as well as circumstances beyond the control of Faes should be ignored for measuring the availability. Unless the Customer provides proof to the contrary, the availability measured by Faes will serve as proof.

#### **5. SUPPORT**

- 5.1 Faes offers Service Support to the Customer. Service Support will not cover issues regarding any hardware, software or other Customer infrastructure system that the Service interacts with, such as a computer, operative system, drivers or any other business systems installed by the Customer or any other services, including internet access and Wi-Fi under the control of the Customer or any of its other service providers or third parties. Service Support will not be available to Customer Affiliates unless otherwise agreed in writing.
- 5.2 General Service Support as defined in a service level agreement governs the Customer's right to receive Service Support for the Service.

#### **6. CONTROL SYSTEMS AND INFORMATION SECURITY**

- 6.1 Faes is responsible for establishing appropriate security and control systems necessary to prevent unauthorised or otherwise erroneous processes or transactions. Beyond that Faes shall not be held responsible for any unauthorised or otherwise erroneous process or transaction made using the Service. The Customer shall indemnify Faes for any third-party claims in connection with erroneous or unauthorised processes or transactions with regard to the Service.

- 6.2 In all contacts with Faes with reference to the Agreement the Customer shall be prepared on request to provide its customer number and provide accurate information about its computer system and its underlying structure, any interruption of service the Customer may be experiencing and the impact this may have on the Customer's business in general.
- 6.3 The access or identification codes, or other means of security, are confidential and shall be treated as such by the Customer and shall only be disclosed to authorised personnel from the Customer's own organisation. The Customer is responsible for managing authorisations and providing and revoking access and identification codes timely.
- 6.4 The Customer shall adequately secure and keep secure its systems and infrastructure.
- 6.5 Faes may assume that any use of the Service with a Customer's access or identification codes is use of the Service by that Customer.
- 6.6 The customer number may only be used by the Customer. The Customer is responsible for ensuring that any login information is securely stored to prevent unauthorised access. The Customer shall immediately notify Faes if the login information is lost, disclosed, or becomes known to a third party, or if the Customer otherwise suspects that it is being misused.
- 6.7 If the Service shall be used to process information from systems belonging to the Customer, or others on the Customer's side, the Customer shall ensure, that information shall be made available in a format as specified by Faes. Details of the current format are available at [<https://api-v2.stackassist.com/docs>] or pages that may later supplement or replace this. If the format is not as specified by Faes then the function of the Service cannot be guaranteed.
- 6.8 Faes is always permitted to make technical and organisational provisions to protect data files, websites, software made available or other works to which the Customer is given access – directly or indirectly – also in connection with an agreed restriction in the content or duration of the right to use these objects. The Customer shall not remove or circumvent such technical provision(s) or have them removed or circumvented.
- 6.9 The risk of loss, theft, misappropriation or damage of items, data (including customer numbers, (access or identification) codes and passwords) or documents produced for, delivered to or used by the Customer in the context of the performance of the Agreement shall pass to the Customer at the time they are placed in the actual control of the Customer or an auxiliary person of the Customer.

## **7. THE CUSTOMER'S TECHNICAL EQUIPMENT AND INFRASTRUCTURE**

- 7.1 The Agreement is subject to the Customer having appropriate technical equipment and internet connection in order to use the Service normally at all times. This is also applicable when the Service has undergone changes in functionality due to upgrades, modified security procedures and other developments.
- 7.2 The Customer shall ensure that its technical equipment does not, alone or together with other systems, generate or permit the excess use of the Service to an extent that significantly limits the Service's functionality. In the event of any such excess use, Faes reserves the right to deny the Customer access to the Service, including internet connection to Faes' servers, with immediate effect.

- 7.3 The Customer is obligated at all times to follow rules for data security that Faes may periodically issue. Faes is entitled to visit the Customer in order to verify that the prescribed security regulations are followed and that the necessary security measures are taken.

## **8. EDI COMMUNICATION**

- 8.1 The Service may contain functions for managing Electronic Data Interchange (EDI) communication. Faes shall have the right, at its own discretion, to increase or withdraw, partly or fully, support for EDI communication to other systems if changes to requirements from others make this necessary.
- 8.2 In order to send EDI, the Customer must meet applicable requirements for EDI communication channels, often an Internet connection. Moreover, the Customer must, where applicable, have signed a contract for EDI communication with the vendor of other systems in question. Faes accepts no responsibility if the Service cannot be used due to errors in the Customer's EDI communication and any other systems.
- 8.3 The Customer shall bear any costs from any parties other than Faes that are attributable to the Customer's EDI communication, API calls or similar and shall indemnify Faes in this regard.

## **9. SUBSCRIPTION FEE**

- 9.1 The Customer shall pay Faes a Subscription Fee, subject to any payment terms applied by Faes.
- 9.2 Faes is not liable to repay any fees to the Customer upon the termination of this Agreement. This also applies to any unutilised part of the Subscription Fee, unless expressly agreed otherwise in the Agreement.
- 9.3 Unless expressly agreed otherwise in writing between the parties the Subscription Fee is:
- (a) in accordance with Faes' price list, which is applicable from time to time, and Faes shall have the right (i) to increase the Subscription Fee annually, and (ii) at any time if subject to changes in public fees, taxes or charges. If, within 14 days of such changes taking effect, the Customer informs Faes in writing of its disapproval of the adjustment, the Agreement shall be cancelled with effect from the date one month after the month in which the Customer's written disapproval was received by Faes. The current Subscription Fee shall continue to apply during the notice period;
  - (b) invoiced in advance;
  - (c) exclusive of VAT and other general taxes or fees and in the currency set forth in the applicable price list; and
  - (d) paid by Customer within 30 days of the invoice date. If there is a delay in payment, late-payment interest shall be charged at an annual interest rate equivalent to the reference rate applied by the European Union ([https://single-market-economy.ec.europa.eu/smes/sme-strategy/late-payment-directive\\_en](https://single-market-economy.ec.europa.eu/smes/sme-strategy/late-payment-directive_en)) at any one time, plus eight per cent. Additionally, in case of late-payment the Customer is obliged to pay Faes any collection costs.

- 9.4 Insofar as Faes remedies errors and/or flaws in the Service, outside the normal (support) service of Faes, Faes is entitled to additional payment for these services in accordance with its regular hourly rates.
- 9.5 The Customer is never entitled to suspend payment of the Subscription Fee and or any other amounts payable to Faes.
- 9.6 The Customer is not entitled to set off any payments.

## **10. INTELLECTUAL PROPERTY RIGHTS**

- 10.1 Except as explicitly provided for in the Agreement no intellectual property right or license, other than may be required to carry out the Agreement, is transferred or granted to the Customer . All intellectual property rights, including but not limited to patents, copyrights and know-how remain the sole property of Faes and/or Faes' licensor.
- 10.2 Faes – or its licensor – shall be the sole owner of any and all rights, title to and interest in, and associated with the website, all materials, reports, analyses, and results, which are developed by, are a result of, or otherwise accrue through or are associated with the performance of the Service, including any patent, copyright or other intellectual property rights, knowhow, trade secrets, inventions, data and other information, without any obligation for Faes to remunerate the Customer. Faes reserves the right to freely modify, develop, licence and transfer developments without compensation to or the approval of the Customer.
- 10.3 Unless otherwise agreed in writing on a case-by-case basis, Faes shall also be the sole owner of any new functionality in the Service developed by Faes which has been suggested, proposed or in other ways communicated by the Customer or any of the Customer's employees, including developments paid for completely or partly by the Customer.
- 10.4 Any information about copyright or any other text about the right of ownership to the Service must not be amended or removed and shall be made clearly visible in the event of any duplication of the Service, insofar as Faes has given prior written approval for such duplication. The same applies to any corresponding text on any hardware, software or documentation provided by Faes.
- 10.5 Faes is entitled to use a Customer's figurative mark, logo or name for its external communication.
- 10.6 In case the Customer violates this clause, the customer shall pay Faes an immediately payable penalty of EUR 25,000 for each violation of this clause, to be increased by EUR 2,500 for each day that the violation continues, without default or notice of default being required and without prejudice to Faes' right to claim additional and full compensation and/or compliance with this clause. The Customer acknowledges the importance of this penalty and declares that the amount of the penalty is reasonable in the context of the value of the intellectual property rights to Faes.

## **11. DATA**

- 11.1 The transaction history generated by the Customer using the Service is stored by Faes. Order Data is stored for a minimum of three months. The Customer is entitled, where applicable and at market price, to view Order Data for use within the Customer's normal business activities during the Agreement period. The Customer may not transfer Order Data to any unauthorised third party or in any other way give such third-party access to Order Data without Faes' prior written

consent. If the Order data contains information that pertains to an identified or identifiable person, Faes reserves the right to change, block or erase such personal data.

- 11.2 If the Customer fails to make payment in accordance with the Agreement or is in any other way in breach of the Agreement, Faes reserves the right to suspend without notification Customer's access to the Order Data until all outstanding amounts have been paid. Customer shall have an obligation to remedy all breaches under this Agreement within 30 calendar days written notice, upon which Faes shall have the right to delete Customer's Order Data.
- 11.3 The Customer shall be the owner of all rights in all Order Data, excluding any StackAssist Data as defined below, processed by Faes. Faes is granted a world-wide, royalty free and unlimited right to use such Order Data to the extent this is necessary to deliver the Service as defined in the Agreement. By using the Service, information connected with an order will be shared with those third parties that are directly involved in each transaction and other parties as necessary to carry out the Service, subject to clause 11 below. Faes shall make its commercially reasonable best endeavours to keep the Order Data confidential and the Order Data shall be subject to appropriate technical and organizational measures as set out in clause 6.
- 11.4 Furthermore, Faes shall have a world-wide, royalty free and unlimited right to use anonymized Order Data for developing statistics relating to the services offered through the Service for further development of the Service and for any other purpose. The data base rights in Faes' data bases containing anonymized data from the Customer together with anonymized data from other customers, shall remain with Faes. Order data will be anonymized during the process of including the data in a database. Faes shall ensure that any Order Data is anonymized in such a way that it is not possible to identify any individual persons.
- 11.5 StackAssist Data may, inter alia, include the following information:
  - (a) routing information;
  - (b) Stack sequence.
- 11.6 StackAssist Data is developed or otherwise acquired by Faes at substantial investment costs and Faes reserves any and all rights thereto. The Customer may only use StackAssist Data in connection with the Service within the scope of Customer's normal business activities and may not sell, make available, provide access to or otherwise transfer all or any part of StackAssist Data, whether in combination with information originally provided by the Customer or not, to unauthorised third parties or in any other way give such third parties access to any part of StackAssist Data without Faes' prior written consent.

## **12. PROCESSING OF CUSTOMER INFORMATION AND PERSONAL DATA**

- 12.1 If and insofar Faes processes any customer information, Faes processes this information in compliance with applicable data protection laws and regulations.

## **13. LIMITATION OF LIABILITY**

- 13.1 Faes shall only be liable towards the Customer for direct, documented damage or loss caused by Faes' breach of its obligations under the Agreement. Faes shall not be liable towards the Customer for any indirect or consequential losses, including but not limited to loss of production, loss of profits, loss of data or loss of business.



- 13.2 Faes shall not be responsible for any damage and/or losses exceeding the amounts paid by the Customer under the Agreement or, in case of an Agreement for an indefinite period, under the Agreement (exclusive of any VAT) for the 12 months preceding the month in which the breach forming the basis for the claim occurred. The liability of Faes is in any case limited to the amount the insurance company of Faes will pay out.
- 13.3 Faes shall not be held liable for any damage due to:
- (a) faults or deficiencies in the Customer's information provided to Faes;
  - (b) the Customer's and/or a third party's processing or use of information received in connection with the Service;
  - (c) the Customer's and/or third party's processing of the Customer's own number series;
  - (d) errors in connection with the transfer of information from or to the Customer or other computer or telecommunications errors;
  - (e) loss, damage or theft of data of the Customer.
- 13.4 Faes cannot warrant that the Service is entirely free from minor software errors, so-called bugs, and shall not be held liable for any damage as a result thereof. Such absolute freedom from software errors cannot be achieved within the software industry.
- 13.5 Faes shall not be held liable for any damage due to interruptions in the Service. Faes reserves the right to make planned interruptions in the Service for repairs, upgrades or other improvements. If possible, the Customer will be notified of such interruptions in a reasonable amount of time via the Faes newsletter or in the relevant online service, and the interruptions will be done within the indicated service window.
- 13.6 Faes shall not be held liable for any damage due to any violation of copyright or other intellectual property right if the Customer uses the Service in a manner that is not intended. In case Faes is held liable by third parties as a result of such a breach by the Customer, the Customer shall indemnify Faes and hold Faes harmless.
- 13.7 Faes shall not be held liable for any damage caused by or attributable to any product or service provided to the Customer free of charge.
- 13.8 If the Customer suffers any damage and/or loss as a result of the use of the Service and the damage and/or loss is attributable to a service or deficiency of a third party – including a licensor of Faes –, Faes' liability is limited to the liability of the third party. In any case, Faes shall not be liable for an amount greater than the amount that Faes is able to claim from the third party.
- 13.9 The exclusions and limitations of liability mentioned in provisions 13.1 up to and including 13.8 do not apply in case of intent or wilful recklessness of the management of Faes.
- 13.10 Where one of the parties under the rules of the General Data Protection Regulation has paid compensation to a data subject, the party shall be entitled to claim back from the other party that part of the compensation corresponding to the other party's part of the responsibility for the damage. Faes shall however only be liable towards the Customer for damages caused by personal data processing if Faes has not complied with obligations of the General Data Protection Regulation specifically directed to processors or where it has acted outside or contrary to lawful instructions of the Customer. A party shall be exempt from liability towards the other party if it proves that it is not in any way responsible for the event giving rise to the damage.

- 13.11 Any accrued compensation in accordance with this clause 13 will be deducted from any damages if the damage relates to the same incident.

## **14. CONFIDENTIALITY**

- 14.1 The Customer undertakes, without limitation in time, not to personally or through another party disclose confidential information originating from or pertaining to Faes. Confidential information pertains to all information, be it commercial, administrative, technical or any other kind, regardless of whether the information is documented or not, that Faes keeps secret and whose disclosure can typically cause Faes (considerable) damage.
- 14.2 Information exempted from Faes' confidentiality obligation is information that:
- (a) is generally known or becomes generally known by some means other than the Customer's breach of the Agreement or confidentiality obligation;
  - (b) the Customer can demonstrate it already had in its possession before it received the information from Faes;
  - (c) the Customer can demonstrate it received or will receive from a third party without being bound by confidentiality by that third party. In this case the Customer is not entitled to disclose to any third party that the same information has also been disclosed – or will be disclosed – by Faes under the Agreement;
  - (d) the Customer received with prior written approval from Faes to submit it to a third party;
  - (e) is submitted in accordance with a decree from an official agency or court;
  - (f) is submitted to the Customer's financial and/or legal advisor on the condition that these advisors are obliged to observe the same level of confidentiality as the Customer.
- 14.3 The Customer acknowledges that the Service made available by or through Faes is always of a confidential nature and contains trade secrets of Faes, Faes' supplier or the licensor of the Service.
- 14.4 The Customer is obliged to ensure its employees, board members, consultants and other contractors do not disclose confidential information to unauthorised persons. It is thereby incumbent upon the Customer to ensure that those persons who may be assumed to come into contact with confidential information observe confidentiality to the same extent that the Customer is obliged according to this clause.

## **15. TERMINATION AND SUSPENSION**

- 15.1 Faes shall have the right to cancel the Agreement with immediate effect if:
- (a) the Customer fails to fulfil its obligations in accordance with the Agreement and the breach of the Agreement is material and the Customer does not undertake rectifying measures within thirty calendar days of receiving written notice of such breach stating the nature of the breach;
  - (b) the Customer discontinues its payments, embarks on corporate restructuring or composition negotiations, is subject to an external bankruptcy application or files for bankruptcy, or enters liquidation;
  - (c) the Customer uses the Service improperly or unlawfully;

- (d) the Customer has been declared or can be expected to be declared by national, EU or foreign authorities to have violated such authority's export-control regulations or will not be qualified to acquire, possess or make use of services or products (including technology) that are subject to export-control regulations; or
- (e) representatives of the Customer commit a criminal act in connection with the fulfilment of the Agreement.

15.2 If, at the time of termination, Faes has already performed part of the Agreement, this performance and related payment obligations shall will not be subject to obligations to undo. Amounts that Faes has invoiced before the termination of the Agreement in connection with already performed work or delivered services remain unaffected and become immediately due and payable at the time of the termination.

15.3 In the event that the Customer is irrevocably declared bankrupt, the Customer's right to use the Service, software, et cetera made available to the Customer automatically end, as well as the Customer's right to access and/or use the Service, without Faes being required to provide a notice and without judicial intervention.

## **16. AMENDMENTS AND SUPPLEMENTS**

16.1 Faes reserves the right to modify these GTC during the period that the Agreement is in force. Faes shall inform the Customer of any such amendment within thirty days of it coming into force. If, within 14 days of such information being issued, the Customer informs Faes in writing of their disapproval of the amendment, the previous wording of these GTC shall continue to apply. Should the Customer not provide Faes with a written notification of its disapproval of the amendments within the time limit, the Customer shall be considered to have accepted the changes.

16.2 Any amendments or supplements to the Agreement – other than the amendments in accordance with clause 16.1 – shall be made in writing and duly signed by the parties in order to be binding.

## **17. TRANSFER**

17.1 Faes reserves the right, without the consent of the Customer, to transfer or pledge its rights and obligations under the Agreement to another company within the company group to which Faes belongs.

17.2 The Customer may only transfer, grant sub-licences to, hire out, lend, pledge or in any other way permit any party other than the Customer, directly or indirectly, to use or otherwise have access to the Service if Faes has given explicit prior written consent in this respect. If such consent has been given, the rights and/or obligations are transferred subject to the conditions that:

- (a) the new Customer undertakes to be bound by the Agreement (including these GTC), and
- (b) the transfer is at no time a breach of national, EU or foreign authorities' regulations.

## **18. NOTIFICATIONS**

18.1 Notifications sent to a party's most recently notified postal address or e-mail address shall be considered to have been delivered correctly. If a specific contact person has been indicated, the

notification to this person shall always be considered to have been conveyed correctly if the correct postal address or e-mail address has been used.

- 18.2 Notifications from Faes to the Customer shall be considered to have been received by the Customer at the latest three working days after the date they were sent, if they were sent to the Customer's most recently notified postal address.
- 18.3 Notifications to the Customer from Faes sent by e-mail shall be considered to have reached the Customer at the latest by midnight on the day after the day the notification was sent, provided that Faes has not received any message indicating a failure of the transfer of the notification.
- 18.4 Additionally, general notifications from Faes to the Customer, which concern all or most of Faes' customers, such as address changes, adjustments in subscription fees or alterations to these GTC, shall be deemed transmitted to the Customer when made available on Faes' website.
- 18.5 It is the responsibility of the party changing its postal address or e-mail address to immediately notify the other party thereof in writing. This also applies to the details of a party's contact persons. The Customer will also notify Faes when a contact person of the Customer is no longer authorised to receive notifications.

## **19. DISPUTES**

- 19.1 Dutch law applies to these GTC, the Agreement, any other agreement concluded with Faes, and/or any disputes in relation thereto. Applicability of the Vienna Convention on Contracts for the International Sale of Goods is excluded.
- 19.2 Any disputes between Faes and a Customer established within the EU are exclusively settled by the competent court of Oost-Brabant in the Netherlands.
- 19.3 Any disputes between Faes and a Customer established outside of the EU that arise in connection with the Agreement, any other agreements with Faes, and/or any other non-contractual disputes with Faes are settled in accordance with the Rules of Arbitration of the International Chamber of Commerce (the ICC) (Paris), as they apply on the date of commencement of the arbitration proceedings, whereby:
  - (a) the arbitration proceedings will be conducted and all documents will be submitted to or by the arbitrator(s) in the English language;
  - (b) the place of arbitration is Amsterdam, the Netherlands, possibly at the Chamber of Commerce, to be chosen at Faes' sole discretion;
  - (c) in principle, the arbitral tribunal shall be composed of a sole arbitrator. If the parties fail to nominate this sole arbitrator with one voice within thirty (30) calendar days from the date when the claiming party's request for arbitration has been received by the other party, the sole arbitrator shall be appointed by The International Court of Arbitration (the Court) of the ICC within as short a time as possible. While appointing the sole arbitrator, parties and/or the Court shall consider the prospective arbitrator's nationality, residence and other relationships with the countries of which parties are nationals and the prospective arbitrator's availability and ability to conduct the arbitration in accordance with the ICC's Rules. The sole arbitrator shall be of a nationality other than those of parties;
  - (d) the arbitral tribunal shall decide *ex aequo et bono* (in Dutch: "*als goede mannen naar billijkheid*");

- (e) the arbitral tribunal is authorized, at the request of a party, to take precautionary or provisional measures and to render an award in summary arbitral proceedings;
- (f) consolidation of the arbitration proceedings with arbitration proceedings pending in an(other) arbitral tribunal in the Netherlands, as provided in Section 1046 of the Dutch Code of Civil Proceedings, is excluded, unless the parties are the only parties to those proceedings;
- (g) the arbitral award is subject to appeal; and
- (h) the parties to the dispute will treat the award rendered by the arbitral tribunal confidentially, and the ICC is not authorized to publish or cause the publication of the award.

19.4 If a dispute falls within the jurisdiction of the Dutch subdistrict court, each of the parties, notwithstanding the provisions of the previous paragraph, is entitled to bring the case as a subdistrict court case before the legally competent court in the Netherlands. The foregoing jurisdiction is only vested in the parties if no arbitral proceedings have yet been instituted in accordance with the previous paragraph in respect of the dispute. If, in accordance with this paragraph, the case has been brought before the legally competent court by one or more of the parties for consideration and decision, the subdistrict court judge of that court is authorized to hear and decide on the case.