

# Software Purchase Agreement

This Software Purchase Agreement is between the parties mentioned below:

<b>Full legal company name</b>	<b>To-Increase BV</b>	<b>[add name of Customer]</b>
<b>Address</b>	Kazemat 2 3905 NR Veenendaal The Netherlands	[add address of Customer]
<b>TAX Number</b>	NL814300108B01	[add TAX number of Customer]
<b>Contact name for invoicing</b>	N/A	[add contact name for invoicing]
<b>E-mail address for invoicing</b>	N/A	[add e-mail address for invoicing]
<b>Phone number for invoicing</b>		[add phone number]
<b>Hereinafter referred to as</b>	"To-Increase"	"Customer"

## Background

This Software Purchase Agreement sets out the terms and conditions under which To-Increase agrees to supply Customer the Software as specified and agreed upon in Appendices attached hereto.

## 1. DEFINITIONS

"*day*" means any calendar day

"*IPR holder*" means any proprietary owner(s) of the intellectual property rights associated with the relevant Standard Software associated with this Agreement.

"*Delivery*" means the Business Day when the Standard Software has been made available to the Customer, whereby said Standard Software is also automatically handed over to the Customer. "*Product*" means the individual object, be it Standard Software covered by the Agreement.

"*Standard Software*" means the standard software programs specified in the Agreement or Appendices hereto. The Standard Software may have been developed either by To-Increase or a third party. Standard Software may, as further specified in clause 2 below or in the relevant Addendum, be purchased either: 1) as a perpetual license where the Customer pays the license fee upfront for a perpetual use right to the Standard Software and in addition thereto purchases a yearly update subscription to said Standard Software, or 2) as a subscription based right to use the

updated Standard Software based on a monthly subscription fee (or such intervals or terms as further agreed). "*Unit of Measure*" means a specific parameter (such as number of Users) of which a license is measured and shall form the basis of the number of licenses to be agreed upon. The exact definition of a Unit of Measure for the relevant Standard Software shall be defined in the relevant addendum.

## 2. SCOPE OF AGREEMENT

### 2.1.

This Agreement (as specified below) sets out the terms and conditions for To-Increase's Delivery of Standard Software to the Customer.

The Software included in this Agreement shall be defined in one or more Addendums (template attached as Appendix 1).

### 2.2. Standard Software

**Perpetual licenses:**

The Customer accepts being obliged by the IPR holder's at any time applicable license terms and update subscription terms for the Standard Software both towards To-Increase and the IPR holder, hereunder e.g. with regards to termination of update subscription.

The license terms and update subscription terms shall apply even if they have not been attached to this Agreement or been signed. Upon request, To-Increase will forward the license terms, update subscription terms and available user manuals to the Customer. If new Versions, Service Resubscriptions, Service Packs etc. are delivered according to the IPR holder's update subscription terms the updated version of the Standard Software shall replace any former version thereof.

Update subscriptions shall commence from the date of the order of the Update subscription.

#### **Subscription based license to Standard Software:**

The subscription fee shall automatically be adjusted by To-Increase in accordance with the IPR Holder's relevant license or use terms for granting access to the Standard Software, and shall automatically be adjusted by To-Increase based on the Customer's increased or decreased consumption (increased or decreased volume, number of users and other relevant parameters) which according to the IPR Holder's license or use terms or list prices for the Standard Software will cause a change to the subscription fee. To-Increase is entitled to let such changes and adjusted prices come into effect without the need of a formal change order or a new addendum, and is entitled to adjust its invoicing to adequately reflect the increased or decreased consumption already at the time where the actual change in the increased or decreased consumption occurs.

During the initial period as specified in the addendum to this Agreement the Parties cannot terminate a subscription-based license to Standard Software for convenience. Unless otherwise stated in the IPR Holder's license terms or use terms and following the lapse of the initial period, the subscription right can be terminated for convenience with a 90 days written notice at the end of a calendar month in which case the Customer's rights to use the Standard Software ceases and expires without further notice at the end of such termination period. Unless otherwise stated in the IPR Holder's license terms or use terms To-Increase and/or the IPR Holder shall - subject to a 3 Working Days written notice - be entitled to immediately suspend, reduce or terminate the Customer's access to the subscription Standard Software in the event of the Customer's breach of obligations under this Agreement or of the obligations stated in the IPR Holder's license terms or use terms, hereunder but not limited to failure to pay the subscription fees at the relevant due date. Such suspension, reductions or termination shall not in any way be considered a breach of To-Increase's obligations under the Agreement.

The Customer accepts being obliged by the IPR holder's at any time applicable license terms and use terms for the subscription Standard Software both towards To-Increase

and the IPR holder. The license terms and use terms shall apply even if they have not been attached to this Agreement or been signed. Upon request, To-Increase will forward the license terms and use terms and available user manuals to the Customer.

#### **2.3 General conditions for perpetual and/or subscription based licenses to Standard Software:**

Prior to first use of the Standard Software the Customer shall inform To-Increase of the serial number, name and version number of any Microsoft Business Solutions program used in connection with the Standard Software.

If the Parties later agree upon purchase of additional perpetual licenses to standard software (hereunder e.g. also additional Update Subscriptions) or additional subscription based Standard Software, then such purchase may be further specified, including the price and date of delivery, in an additional addendum to this Agreement. Unless otherwise agreed, such addendum shall automatically be considered an individual delivery which is separately governed by the legal terms of this Agreement, hereunder also by the at any time applicable license terms and update subscription terms of the IPR holder (for perpetual licenses) and license terms or use terms (for subscription based licenses). When entering into such addendums the parties may use the attached template for additional purchases, cf. appendix 1, but the purchase can also be agreed upon in e.g. an email or via GSS in which case the purchase shall also be regarded as an addendum under this Agreement.

Some Standard Software products are user-based, meaning that the exact number of licenses that the Customer must acquire to such product depends on the number of users acquired by the Customer for a different Standard Software product, e.g. the number of Microsoft Dynamics AX users or Microsoft Dynamics NAV users. Such interdependency between the licenses to two different Standard Software products will be stated in the license terms or conditions of at least one of the two involved Standard Software products. When dealing with such user-based products or similar interdependencies, the Customer hereby accepts that automatic purchase of further licenses will occur whenever users are acquired for the other involved product upon which the former product is dependent. This shall apply even if such interdependency is neither stated in this Agreement nor in the addendum hereto, in which the relevant Standard Software is purchased, as long as it is nevertheless stated in the license terms or conditions of the Product. Whenever the mentioned interdependency occurs in practice, To-Increase is entitled to acquire the required extra licenses on behalf of the Customer and to invoice the Customer for these extra licenses (including update subscription when applicable).

### **3. USE**

#### **3.1.**

The Customer is hereby granted right of use to the specified Product(s) in accordance with the terms and conditions set out in the Agreement.

## 4. DELIVERY

### 4.1.

Any Delivery of the Product(s) is exclusive of services for installation, modification, implementation or other services related to the Product(s). If the Customer requests such additional or other services this shall be agreed upon separately and shall be invoiced separately according to To-Increase's standard rates and delivered according to the terms and conditions for the relevant service in force at the relevant time.

### 4.2.

If an agreed upon date of Delivery cannot be met, To-Increase is obliged to notify the Customer thereof without undue delay and in such case the Customer is obliged to minimize any financial consequences of the notified delay. To-Increase does not undertake any responsibility for delays caused by the IPR holder, or any of their local representatives.

### 4.3.

The risk for accidental loss or damage shall pass from To-Increase to the Customer on the date of Delivery. Unless otherwise agreed, the Customer shall pay all transport and/or shipping costs for Delivery of the Product(s) to the Customer's address.

### 4.4.

Upon Delivery, To-Increase shall be entitled to include the Customer on To-Increase's reference lists for marketing purposes.

## 5. MODIFICATIONS

### 5.1.

If the Customer changes or updates the Product(s) or orders changes or updates to the Product(s) from third parties, To-Increase does not guarantee that the Customer will be able to make full use of any adjustments in the application logic of the Product(s) or of any modifications or additions to the Product(s) and To-Increase cannot and does not warrant that the Product(s) will function as required or expected by the Customer.

## 6. DOCUMENTATION

### 6.1.

Upon request, any agreed upon user manuals etc. for the Product(s) will be forwarded to the Customer. Availability of on-line manuals is subject to local conditions.

## 7. PRICES AND TERMS OF PAYMENT

### 7.1.

Unless otherwise stated in the Agreement all sums are quoted in EURO (€). VAT is not included in fees.

### 7.2.

All invoices fall due 14 (fourteen) days after the invoice date. In the event that payment is not effected in due time, default interest will accrue at an collection cost at 5% of the invoiced amount and an interest rate equal to the Dutch statutory interest per month. Unless more restrictive terms have been agreed elsewhere the following shall apply: If the Customer has unsettled but payable debt to To-Increase for a period of 8 (eight) days after the due date and the Customer has been given written notice hereof, To-Increase has the right to suspend performance of any and all obligations under the Agreement without this constituting a breach of the Agreement, until the debt has been settled.

If To-Increase sends invoices etc. to the Customer in a digital way (via email etc.) the Customer hereby in advance approves this digital procedure.

### 7.3.

Any and all maintenance charges or update fees for perpetual licenses are invoiced according to the specifications in the Agreement or in the IPR holders update subscription terms.

### 7.4.

Any objections to an invoice must be received by To-Increase in writing within 14 (fourteen) days from the date of invoice and the objection must include a detailed explanation of the objection. Should the objection deadline be exceeded, the invoice shall automatically be regarded as accepted.

## 8. LIABILITY

### 8.1.

Upon receipt of the Product the Customer is obliged to examine such Product thoroughly in order to ensure that the Product is in compliance with the terms and conditions of the Agreement. The Customer must give written notice of any defect ascertained in the delivered Product within the warranty period (if any) granted by the IPR holder and immediately after the defect has been, or should have been, ascertained. The notice shall contain a description of the specific defect or error. To-Increase does not issue any warranties for the Standard Software or for integration and functionality in relation to the Customer's other software.

In connection with the implementation of Hot Fixes, Service Packs or new Versions, To-Increase does not guarantee that the Customer will be able to make full use of the Product(s) and To-Increase disclaims any product liability to the maximum extent permitted by applicable law.

The Customer is covered by the warranties supplied by the IPR holder if any such warranties are offered by the IPR holder. To-Increase's obligations pertaining to remedy of defects are as follows: 1) To-Increase is obliged to receive the Customer's notice of defects 2) To-Increase is obliged to give

recommendations to the Customer on ways known to To-Increase on how to bypass such faults so as to cause the least possible disruption to service and 3) To-Increase is obliged to report the fault to the IPR holder without undue delay.

The above (Clause 8) describes in full To-Increase's obligations and liability for faults and defects in Product and the Customer hereby expressly and irrevocably waive any and all other remedies otherwise available to the Customer under the Agreement or elsewhere in respect of faults and defects in the Standard Software. The tasks specified in 8.1 shall be invoiced on a time and material basis.

8.2.

The parties shall not (whether for breach of contract, negligence, tort or otherwise) be liable for loss of profit due to business interruption, operating losses, loss of data, defective data, corruption of data, the injured party's increased use of internal or external resources, loss of reputation or goodwill, or other indirect losses or damage. To-Increase's total liability under the Agreement cannot exceed 25% (twenty-five per cent) of the Fees paid for the specific Product that is the subject of the claim. To-Increase shall not be liable for any claim arising out of this Agreement unless receiving written notice of the claim within 6 (six) months of the date when the Customer became aware, or should have become aware, of the circumstances giving rise to the claim.

If all or part of the above limitations of liability is considered to be contrary to applicable law, the Parties agree that liability shall be limited to the maximum extent permitted by applicable law.

8.3.

Neither party shall be liable for failure to comply with its contractual obligations, including delays and/or defects, if caused by circumstances beyond the control of the said party, including but not limited to industrial conflicts (strikes and lockouts), fire, war, riots, internal disorder, natural disasters, currency restrictions, any effects of computer viruses or worms, seizure by public authorities, import and export bans, interruption or failure of ordinary communications and transport, including interruption or failure of power supply, and any force majeure affecting the performance of a subcontractor of To-Increase.

8.4.

The limitations of liability stated in this Agreement shall have effect to the maximum extent permitted by applicable law.

## 9. INTELLECTUAL PROPERTY RIGHTS

9.1.

In exchange for the stipulated payment, the Customer acquires the right of internal use of the Product. The Customer does not acquire any Intellectual Property Rights for the Product. The Customer's right of use may be described in detail in the IPR holder's license terms.

## 10. ASSIGNMENT

10.1.

Unless otherwise specified in the Agreement, the Customer shall not be entitled to assign any Product or part thereof or right or obligation thereto without the prior written consent of both To-Increase and the relevant IPR holder.

10.2.

To-Increase shall be entitled to assign its rights and obligations under the Agreement to a third party in connection with a merger, acquisition of new businesses or change of control. To-Increase is furthermore entitled to assign its rights and obligations under the Agreement to associated companies. Except for as stated above, To-Increase may only assign its rights and obligations hereunder with the Customer's written approval, such approval not to be unreasonably withheld.

## 11. TERMINATION FOR CAUSE

11.1.

A party may terminate the Agreement if the other party is in breach of contract under this Agreement and shall fail to remedy such default within 30 (thirty) days from receipt of notice in writing from the first party specifying such breach.

11.2.

If To-Increase terminates the Agreement due to the Customer's breach of contract, the Customer shall return the Product delivered by To-Increase to the Customer and in such case the Customer is not to be compensated in any way. Furthermore, the Customer is obliged by the relevant terms of the IPR holder.

## 12. TERMINATION OF UPDATE SUBSCRIPTION FOR PERPETUAL LICENSES

Besides termination for cause, the Parties may choose to terminate an update subscription for perpetual licenses as provided for below:

Unless anything else is agreed upon or provided for in the IPR holder's update subscription, the Customer may only terminate the update subscription upon at least 3 month's prior written notice prior to the commencement of a new subscription term. Such termination of a subscription term may cause complications in relation to the use of the relevant Standard Software. Furthermore, the termination may result in extra costs both due to possible complications and in case of later resubscription to the update subscription. In case the IPR holder officially ceases to deliver update subscriptions, To-Increase shall be entitled to terminate the relevant update subscription without any prior notice by refunding a proportionate part of the sums paid by the Customer for the update subscription equivalent to the remaining ("unused")

part of the present subscription term for the update subscription.

12.1. Termination of subscription based licenses to Standard Software

Unless otherwise agreed, the terms and conditions regarding termination (termination for convenience or termination for cause) of subscription based licenses to Standard Software are as described in clause 2.2 in this Agreement.

13. RETENTION OF TITLE

To-Increase retains full ownership of the delivered Product until the purchase price agreed upon, including interest and costs, has been paid, at which point the Customer acquires the user right described in Clause 9.1.

14. LAW AND VENUE

14.1.

Any and all disputes arising out of or in connection with the Agreement shall be governed by and construed in accordance with the laws of the Kingdom of the Netherlands.

14.2.

Any and all disputes shall be settled at the ordinary courts in Amsterdam, Netherlands.

15. VALIDITY

15.1.

If any provision of the Agreement is held to be illegal, invalid or unenforceable, such provision (including necessary modifications to other provisions) shall nonetheless be enforced to the fullest extent permitted by applicable law, so as to reflect the original intent of the parties.

15.2.

Variations are entered into and are effective as of the date of signature (by both Parties) of each Variation.

15.3.

This Agreement becomes effective when signed by both Parties and will continue in effect until terminated by either party none regarding the Initial Term as specified in the addendum to this Agreement.

	To-Increase	Customer
<b>Name</b>	Luciano Cunha	[add name signatory here]
<b>Title</b>	CEO	[add title here]
<b>Signature</b>		
<b>Signature date</b>		
<b>Legal Check:</b>		