

# General Terms and Conditions

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5 september 2016

Wageningen University – Commercial Register no. 09215846  
Stichting Wageningen Research – Commercial Register no. 09098104



**These General Terms and Conditions (the "General Conditions") have been drawn up by Wageningen University and Stichting Wageningen Research (WR Foundation) and have been lodged with the Netherlands Chamber of Commerce for Central Gelderland in Arnhem.**

**These General Conditions apply to the express exclusion of client's general conditions, howsoever described.**

## Article 1

### Definitions and scope

#### 1.1

Background Knowledge; all information (including any intellectual property rights thereon) which prior to the commencement of the Research was owned by the client or Wageningen University & Research, as well as all information generated by the client or Wageningen University & Research outside the scope of the Research. Offer: the offer from Wageningen University & Research to the client to carry out activities in accordance with a Research Plan for a certain price.

Research: activities undertaken by Wageningen University & Research on the basis of a Research Plan agreed between the client and Wageningen University & Research.

Research Plan: attachment to the Offer setting out the Research activities.

Report: a written document describing the Research performed or partly performed, as well as any Results.

Result: all envisaged results, including goods, arising from the Research insofar as they are included in a Report.

Confidential Information: all information received by the receiving party from the disclosing party within the framework of a contract and 1) that the disclosing party designates as confidential, or 2) that the receiving party should reasonably know or ought to know is confidential information.

Wageningen University & Research:, hereafter referred to as "WUR", a collaboration between several legal entities, namely Wageningen University and the Stichting Wageningen Research. In these General Conditions the name "WUR" includes each said legal entity either individually or jointly, more specifically:

Wageningen University, departments of:

- Agrotechnology & Food Sciences;
- Animal Sciences;
- Social Sciences;
- Environmental Sciences;
- Plant Sciences;

Stichting Wageningen Research, research institutes:

- Wageningen Food and Biobased Research;
- Wageningen Livestock Research;
- Wageningen Environmental Research;
- Wageningen Plant Research;
- Wageningen Economic Research;

- Centre for Development Innovation;
- RIKILT;
- Wageningen Bioveterinary Research;
- Wageningen Marine Research;

#### 1.2

A contract is concluded at the moment that an Offer made by WUR is accepted in writing, within a reasonable period of time, by the client and commences on the start date specified in the Offer or, in the absence of such a date, on the date on which written acceptance is received by WUR. If with the consent of the client WUR has already begun to perform the Research, the content of the Offer will be deemed to have been agreed to.

#### 1.3

In the event of any conflict between the various documents, the following order of precedence applies: 1) Offer, 2) General Conditions, 3) Research Plan.

## Article 2

### Offer, content of contract

#### 2.1

An Offer may be revoked by WUR unless a term of acceptance is specified.

#### 2.2

The use or disclosure by the client of the knowledge and ideas of WUR contained in the Offer and the Research Plan, for purposes other than for evaluating their interest in this assignment, is prohibited. The same prohibition applies to any proposed amendment or addition to an Offer or Research Plan.

#### 2.3

The contract will be carried out in accordance with the description of activities contained in the Offer and the Research Plan, including all changes agreed thereto in writing.

#### 2.4

Investigations into the existence of patent-rights of third parties or into the possibility of filing a patent do not form part of the contract. Should parties expressly agree in writing to such investigations, WUR accepts no liability whatsoever for the content and results thereof.

## Article 3

### Performance of the contract

#### 3.1

In performing the contract, WUR shall make reasonable efforts to achieve a usable Result for the Client. The Research is performed within the framework of the *Wageningse Gedragscode Wetenschapsbeoefening* (code of conduct for scientific practice), which describes the general views on good scientific practice including the principle that

results and conclusions may not be influenced by the interests and wishes of clients.

### **3.2**

All time limits specified in the Offer and Research Plan are estimates. The mere expiry of a time limit does not constitute default by WUR. If WUR foresees that a time limit will be exceeded significantly, then WUR will notify the client in order to come to a solution.

### **3.3**

WUR is not obliged to commence the work until all information, samples, equipment and other items to be supplied by the client to WUR have been supplied in the agreed form, quantity and/or quality. If the client should delay supplying these items, then WUR is entitled to draw up a revised schedule and pass on to the client any costs incurred due to the delay.

### **3.4**

WUR is entitled to replace employees who perform the activities with other employees.  
WUR is entitled to have the contract or any part thereof performed by third parties under its responsibility – without the consent of the client.

### **3.5**

Each party shall notify the other party of any unusual circumstances occurring during performance of the contract that in the view of that party are relevant to the other party.

### **3.6**

If the contract involves Research on samples, the client is responsible for their selection, representative range, coding and indication of product or brand names, identification, date of sampling, and other relevant information pertaining to the samples to be researched.

### **3.7**

Where reasonably possible, WUR shall keep items, including samples or the remains thereof, supplied to WUR for the purpose of the contract for a period of two weeks following the date on which the Results have been communicated to the client. If within this period the client has not taken steps to have such items returned, WUR is free to take appropriate measures at the expense of the client.

## **Article 4 Reporting**

### **4.1**

WUR shall report to the client on the progress of the performance of the contract in accordance with the relevant terms of the Offer or Research Plan.

### **4.2**

Results or Reports are deemed to have been accepted by the client unless, within four (4) weeks of such Results or Reports being sent, a written objection thereto has been

received by WUR.

## **Article 5 Price and payment**

### **5.1**

All amounts specified by WUR in the Offer or Research Plan are in euros, and exclusive of VAT.

### **5.2**

Unless agreed otherwise in the Offer, the price specified in the Offer is a fixed price. WUR is entitled to index the uninvoiced portion of the fee in accordance with its annual price increase as of 1 January of each year.

The cost of additional work can only be passed on to the client, if prior consent to this end has been provided by the client either in writing or by email.

### **5.3**

The price for performing the contract is to be paid by the client in accordance with the payment schedule set out in the Offer. In the absence of any such schedule, WUR may require payment in advance and/or issue interim invoices.

Invoices issued by WUR must be paid by the client within thirty (30) days of the invoice date.

### **5.4**

If an invoice is not (fully) paid within thirty (30) days of the invoice date in accordance with article 5.3, then WUR retains the right to increase the amount invoiced by charging contractual interest at a rate of one and a quarter percent (1.25%) per thirty (30) days or part thereof, until the amount invoiced including the aforementioned increase has been paid in full. WUR also retains the right to claim for damages and pass on any debt collection costs to the client.

### **5.5**

Until such time as payment has been made in full by the client, WUR retains ownership of all goods supplied to the client under the contract. Rights will be granted or assigned to the client under the suspensive condition that all sums owed by the client to WUR in connection with the contract have been paid in full.

## **Article 6 Confidentiality**

### **6.1**

The receiving party undertakes to preserve the confidentiality of all Confidential Information and shall not use it for any purpose other than for the performance of the contract. These conditions will be binding for the term of the contract and for a period of three (3) years after the end of the contract.

### **6.2**

The provisions of 6.1 do not apply to Confidential Information which the receiving party can demonstrate:

- was already in the public domain at the time it was supplied or, has become public thereafter through no fault on the part of the receiving party;
- was already in receiving party's possession at the time it was supplied to it;
- was obtained from a third party not under any obligation of confidentiality and, to the best of recipient's knowledge and belief, did not originate from the disclosing party;
- was independently obtained by client as a result of its own research, without use or reference to the Confidential Information received;
- must be disclosed pursuant to a statutory obligation or an order of a judicial institution, administrative body or governmental institution.

### 6.3

The obligations arising from article 6.1 do not apply if and insofar as they are in conflict with any statutory tasks or obligations of WUR, and in that regard WUR foresees a significant risk to persons, property, the environment or public health. In such cases, WUR shall, if possible, consult with the client before disclosing the Confidential Information.

## Article 7 Rights to Results

### 7.1

WUR and the client will remain owner of their respective Background Knowledge.

### 7.2

Models, techniques, methods, instruments, including software, algorithms and other information, including any improvements or modifications thereof, are the property of WUR.

### 7.3

The results derived under the contract are the intellectual property of and belong to WUR. The client has a non-transferable, non-exclusive right to use the Results within the research area of the contract as described in the Offer and/or Research Plan.

### 7.4

WUR is entitled to use the results derived under the contract for internal research and educational purposes. After the delivery of a Report, WUR is entitled to use the Results contained therein for the benefit of third parties, and, after the contract has ended, to permit third parties to use these Results.

### 7.5

Client acquires ownership of the Reports once the provisions of Article 5.5 have been fulfilled. WUR retains the copyrights thereto and grants the client the right to duplicate Reports for internal use.

## Article 8 Publication

### 8.1

WUR is entitled to disclose the Results, in compliance with the provisions of Article 6. During the term of the Research, WUR shall notify client in writing of any proposed disclosure of the results to.

Consent to the proposed disclosure is deemed to have been given if WUR has not received a written response from the client within thirty (30) days of written notice thereof.

A substantiated written request from client to postpone publication, will only be granted to the extent necessary for client to investigate the inclusion of any Confidential Information in the proposed disclosure of the Results, or, following the consent of WUR, for the purpose of investigating the possibility of applying in its own name for protection of the Results in question.

Disclosure of the Results may be postponed for a period of two (2) months. If, pursuant to any further agreement between the client and WUR, the client is entitled to apply for intellectual property rights to the relevant Results and proceeds to do so, the postponement period will be extended by a further period of three (3) months. At the end of this period or periods, WUR is entitled to publish the Results.

### 8.2

The client is not permitted to disclose in whole or in part, any Report or Results issued by WUR without the prior written consent of WUR. Disclosure also includes release to any third party, use in judicial proceedings, advertising and advertisements in a general sense.

### 8.3

The client is not entitled to use the name and logos of WUR or any part thereof in any manner whatsoever.

## Article 9 Protection of knowledge

### 9.1

Insofar as the Results are eligible for any intellectual property protection, WUR is entitled to secure these property rights in its name and at its own expense.

### 9.2

The Parties shall provide each other with all necessary assistance in filing an application as referred to in the preceding paragraph.

## Article 10 Liability

### 10.1

The total liability of WUR for loss or damages suffered by the

client due to or in connection with the contract is limited to direct loss and damages not exceeding the amounts already paid by the client. This limitation does not apply if and insofar as the loss is caused by any deliberate act or gross negligence on the part of WUR.

### **10.2**

WUR is not liable for loss or damages suffered by the client as a result of the use by the client of Results and/or due to negative publicity, nor for any indirect, consequential or any other incidental loss or damages including, but not limited to, loss of turnover or profit and loss of data.

### **10.3**

WUR accepts no liability for loss or damages caused by defects to items supplied to WUR, including software, that are passed on by WUR to the client, except and insofar as WUR is able to recover such loss or damages from its supplier.

### **10.4**

All claims for damages against employees and persons engaged by WUR are excluded. Employees and persons engaged by WUR may at all times invoke this third-party clause stipulated on their behalf.

### **10.5**

The client indemnifies WUR against any third-party claims connected in any way with activities carried out by WUR for the client or arising from the use of the Results. The client indemnifies WUR against any third-party claims arising from the use of goods or information supplied by the client to WUR for the purposes of the contract.

## **Article 11**

### **Force majeure**

If either WUR or the client are unable to fulfil their contractual obligations due to force majeure, the relevant party may suspend its obligations for the duration of this situation, provided that the other party has been informed in writing immediately after the situation of force majeure occurs. Force majeure will include all those situations that prevent the performance of the contract and are not attributable to the party in the situation of force majeure either pursuant to law, the contract, or any generally accepted standards, including, but not limited to the loss of animals and plants used in the performance of the contract.

## **Article 12**

### **Termination**

#### **12.1**

Either party is entitled to rescind the contract with immediate effect and without prejudice to their right to compensation if the other party substantially fails to fulfil

any essential obligation pursuant to the contract, and the defaulting party fails to fulfil the obligation within a reasonable period as stipulated by the other party in a written notice of default.

#### **12.2**

The parties are entitled to terminate the contract with immediate effect by registered letter only in the following cases:

1. if the other party is declared bankrupt or granted suspension of payments, or if an application to that end is filed;
2. if the other party's business is liquidated or discontinued;
3. if a situation of force majeure as described in Article 11 occurs and has continued for a period longer than ninety (90) days.

## **Article 13**

### **Miscellaneous**

#### **13.1**

Any claims on the part of the client for loss or damages will lapse twelve months after completion of the activities leading to the client's entitlement to invoke these rights.

#### **13.2**

Should it become apparent that a party cannot invoke one or more of the provisions of these General Conditions at law, the contract and the remaining provisions of these General Conditions will remain in force. In such a case, said provision will be replaced by a provision as close as possible to said provision in terms of content, scope and consequences.

#### **13.3**

Client is not entitled to assign its rights and obligations under the contract to a third party without the prior written consent of WUR. Such consent will not be refused on unreasonable grounds.

## **Article 14**

### **Disputes**

#### **14.1**

The contract and the legal relationship between WUR and the client are governed by Dutch law.

#### **14.2**

Any dispute arising from the contract or further contracts ensuing thereof will be judged exclusively by the competent court in Arnhem.