



## General terms and conditions of sale, delivery and payment of the Stichting Nederlands Wetenschappelijk Onderzoek Instituten (NWO-I)

### **1 Definitions**

- 1.1 Customer: buyer of products and/or services of NWO-I.
- 1.2 NWO-I: Netherlands Foundation of Scientific Research Institutes [hereinafter referred to as "NWO—I"].
- 1.3 General Terms and Conditions: these general terms and conditions of sale, delivery and payment.

### **2 Applicability of the General Terms and Conditions**

- 2.1 These Terms and Conditions shall apply to all offers made by NWO-I and to all agreements between NWO-I and Customers, unless specifically otherwise agreed in writing.
- 2.2 These General Terms and Conditions shall apply exclusively to all offers and agreements. Applicability of any general terms and conditions used by the Customer is explicitly rejected.
- 2.3 Additions to or deviations from these General Terms and Conditions shall bind NWO-I only where specifically agreed in writing.
- 2.4 If any provision of these General Terms and Conditions is found to be void or is declared void, the agreement concluded between NWO-I and the Customer will continue to apply to the extent possible. The relevant provision will be replaced by a provision that approximates, as much as possible, the intent of the original provision.
- 2.5 These General Terms and Conditions are available in Dutch and in English. In case of inherent inconsistency or differences in interpretation between the Dutch and the English General Terms and Conditions, the Dutch General Terms and Conditions shall prevail.

### **3 Offers**

- 3.1 Any offers, quotations and recommendations submitted by NWO-I are entirely free of obligation, unless specifically otherwise agreed in writing. An offer is valid for 30 calendar days.
- 3.2 Any offers, quotations and recommendations submitted by NWO-I are based on the information provided by the Customer. NWO-I may unreservedly assume the correctness of the information provided by the Customer.

### **4 Agreement**

- 4.1 An agreement is only concluded if NWO-I confirms an assignment in writing or if NWO-I executes the agreement without any reservation.
- 4.2 The content of the agreement is limited to what has been agreed in writing. Additions or amendments to the agreement are binding on NWO-I only where these have been confirmed in writing by NWO-I.
- 4.3 If on the part of the Customer, two or more natural or legal persons jointly conclude an agreement with NWO-I, these parties are jointly and severally bound to NWO-I in respect of the obligations arising from this agreement.
- 4.4 Oral commitments by, or agreements with, employees of NWO-I only bind NWO-I insofar as these have been confirmed in writing by NWO-I.
- 4.5 NWO-I is not obliged to commence or continue the work as long as the Customer fails to fully submit the documents, items, data, intelligence or information required by NWO-I for the performance of the work. If the Customer, after receiving notice, still fails to submit the documents, items, data, intelligence or information required by NWO-I, the Customer will be liable to NWO-I for the damage resulting therefrom for NWO-I.
- 4.6 NWO-I has the right to subcontract its obligations towards the Customer, in whole or in part.

### **5 Prices**

- 5.1 The Parties can agree on a fixed price at the conclusion of the agreement.

- 5.2 If no fixed price has been agreed, the price will be determined based on rates set by NWO-I. These rates can be revised by NWO-I at the beginning of each year.
- 5.3 The prices stated by NWO-I, unless stated otherwise, are in euros and are exclusive of turnover tax (VAT) and other levies imposed by the government. The prices are also exclusive of packaging costs and shipping costs as described in article 6.6.
- 5.4 After conclusion of the agreement, NWO-I has the right to increase the agreed prices in case of interim developments that have a price-increasing effect such as changes in freight charges, customs tariffs, goods and/or raw material prices, taxes, wages or social insurance contributions, exchange rates and other price-increasing factors.

## **6 Delivery and risk**

- 6.1 Unless specifically otherwise agreed in writing, delivery will be made ex warehouse / ex works of NWO-I.
- 6.2 The products are at the risk of the Customer, 7 calendar days after NWO-I informed the Customer that the products are ready for delivery or as soon as the products leave the works/warehouse of NWO-I.
- 6.3 The Customer shall take delivery of the purchased products the moment the products are ready for delivery. If the Customer refuses to take delivery or fails to provide information or instructions required for delivery, the products will be stored at the risk of the Customer. In that case, the Customer shall pay the storage costs, without prejudice to NWO-I's right to full compensation.
- 6.4 NWO-I has the right to deliver the products sold in consignments unless a partial delivery has no independent value. If partial deliveries of the products are made, NWO-I has the right to invoice each part separately.
- 6.5 The shipment of the products is always at the risk of the Customer, even when delivery carriage paid has been agreed upon. The manner of transport is at the sole discretion of NWO-I, even when delivery is not carriage paid and the Customer has not given any instructions for the shipment.
- 6.6 In the event that NWO-I provides services to the Customer, NWO-I reserves the right to replace the employees of NWO-I who provide the services, by one or more other employees, provided that the replacement employees have at least the same level of knowledge and experience.
- 6.7 In the event that NWO-I provides services for the Customer, the Customer guarantees that the employees of NWO-I who perform the services at a location of the Customer are provided with adequate and safe workspace and materials.

## **7 Delivery period**

- 7.1 Delivery periods are deemed to have been approximately agreed, unless these delivery periods are explicitly considered to be final, on the understanding that NWO-I to the best of its abilities, will try to remain within these delivery periods. If it is foreseeable that a delivery period will be exceeded, NWO-I will inform the Customer thereof as soon as possible.
- 7.2 The delivery period will commence as soon as all the products, materials and data necessary for the execution of the agreement have been provided by the Customer and the suppliers of NWO-I and any deposits agreed on have been received by NWO-I.
- 7.3 Exceeding the delivery period does not oblige NWO-I to pay compensation, nor does it give the Customer the right to terminate the agreement. However, the Customer does have the right, on expiry of a delivery period, to declare NWO-I to be in default in writing and in addition to set a reasonable period for performance, after expiry of which each Party may terminate the agreement in respect of the products and/or services not yet provided, without the Parties being liable for compensation in respect of this termination.
- 7.4 If it has been agreed that the performance of the work will be carried out in phases, NWO-I may postpone the commencement of the work for a subsequent phase until the Customer has approved and paid the results of the previous phase.

## **8 Samples, models and examples**

- 8.1 Any information and/or documentation provided by NWO-I or by the Customer will remain the property of the Party providing it.
- 8.2 Any models, samples, images, drawings, measurements, weights or other data shown or provided by NWO-I are as much as possible in accordance with the (product) information provided by the manufacturer/supplier to NWO-I and are indicative only. The products to be delivered may deviate therefrom. The Customer cannot

derive any rights from the data provided or shown by NWO-I referred to above with regard to the conformity of the delivered products, unless explicitly stated in writing that delivery will take place in accordance with the provided models, samples, images, measurements, weights or other data.

## **9 Payment**

- 9.1 Payment shall be made within 30 calendar days following the invoice date in the manner indicated by NWO-I. After expiry of this period, the Customer is in default and shall pay a compound interest, calculated at a percentage equal to the statutory commercial interest rate for the relevant transaction, increased by 1.5% per month or part thereof that payment in full has not been made.
- 9.2 Payment shall be made without any discount, suspension or setoff.
- 9.3 At all times, NWO-I has the right to demand a deposit on the products to be delivered or the work to be performed. NWO-I also has the right to demand other security for the fulfilment of the obligations of the Customer in the form of an irrevocable bank guarantee that can be called immediately on request from a Dutch banking institution with a good reputation or a reasonable equivalent security and it has the right, until such security has been provided, to suspend its obligations towards the Customer.
- 9.4 Payments made by the Customer shall first serve to settle any payable interest and costs and subsequently the longest outstanding payable invoices, even if the Customer should state that the payment is related to an invoice sent subsequently.
- 9.5 In the event of liquidation, insolvency, suspension of payments or (partial) attachment of the assets of the Customer, all obligations of the Customer will be immediately due and payable.
- 9.6 If the Customer is in default in respect of the fulfilment of one or more of its obligations, all extrajudicial and judicial costs will be for the account of the Customer.
- 9.7 Any complaints against the invoice shall be received in writing by NWO-I within 14 calendar days of the invoice date and do not suspend the Customer's payment obligation. When complaints against the invoice are not made in good time, this will lead to the lapse of the right to claims in respect of the alleged defect.

## **10 Defects and time limits for lodging complaints**

- 10.1 The Customer shall have the purchased products inspected for conformity upon delivery or as soon as possible thereafter. Visible defects or otherwise reasonably recognizable defects shall be reported in writing by the Customer to NWO-I within 8 calendar days of delivery. Invisible defects shall be reported by the Customer to NWO-I within 8 calendar days of discovery. Failure to report in time will lead to expiry of the rights under the guarantee and other claims in respect of the defect in question.
- 10.2 Defects in respect of services provided by NWO-I shall be reported in writing by the Customer to NWO-I within 20 calendar days after NWO-I informed the Customer that the agreed services have been completed. Invisible defects shall be reported by the Customer to NWO-I within 20 calendar days of discovery. Failure to report in time will lead to expiry of the rights under the guarantee and other claims in respect of the defect in question.
- 10.3 Even if the Customer makes a complaint in time, its obligation to pay and take delivery of orders made still remains.

## **11 Guarantee**

- 11.1 NWO-I guarantees, with due observance of the other provisions of these General Terms and Conditions that the products it delivered are in accordance with their specifications and for a period of 6 months after delivery will function in accordance with their specifications.
- 11.2 A guarantee on materials and/or products purchased by NWO-I from third parties is given only if and insofar as the manufacturer/supplier in question gives a guarantee and only to the extent thereof. NWO-I is not liable towards the Customer for compliance with this manufacturer/supplier guarantee but NWO-I will assist the Customer in passing on guarantee claims.
- 11.3 If an item delivered does not comply with the agreement, the Customer is entitled to repair or replacement of the item delivered, such at the discretion of NWO-I. Replaced products will become the property of NWO-I.
- 11.4 The guarantee does not apply if the item delivered not being and/or not functioning in accordance with the specifications, in whole or in part, is the result of improper handling such as, for example, but not limited to negligence, misuse, incorrectly or not following the maintenance instructions. In addition, the guarantee does

not apply if it concerns deviations that technically could not reasonable be avoided, imply a qualitative improvement or not significantly limit the item's functionality given the purpose for which the Customer uses the item in the Customer's normal business operations.

- 11.5 Products sent to NWO-I for guarantee evaluation shall always be sent carriage paid. Carriage forward shipments will be refused by NWO-I, even if it concerns products returned for repair outside the guarantee given.
- 11.6 With due observance of the provisions elsewhere in these General Terms and Conditions, NWO-I will provide services to the best of its knowledge and abilities and in accordance with high standards, all with state-of-the-art technology. This is a best efforts obligation.

## **12 Liability**

- 12.1 The liability of NWO-I for delivered products is limited to the fulfilment by NWO-I of its guarantee obligations as described in article 11. If NWO-I in some case is unable to invoke the limitation described above, a limitation of liability will apply with regard to the delivery of products up to the invoice amount of the products in question.
- 12.2 The liability of NWO-I for direct damage suffered by the Customer in respect of services provided is limited to those cases in which NWO-I imputably failed to fulfil its obligations and is limited to the invoice amount.
- 12.3 NWO-I's liability for indirect damage, such as, but expressly not limited to loss of profits and sales, loss due to business interruption and missed savings, is excluded in all cases.
- 12.4 NWO-I's liability for damage suffered by the Customer which is the result of an unlawful act committed by NWO-I in the context of the execution of the agreement is excluded, except insofar as the damage is the result of deliberate recklessness or deliberate intent of the directors or managing employees of NWO-I.
- 12.5 Any claim of the Customer against NWO-I pursuant to this article, will lapse if the Customer fails to bring legal proceedings against NWO-I within six months of completion of the assignment and/or termination of the agreement.
- 12.6 Further-reaching conditions limiting or excluding liability, which can be invoked against NWO-I by third parties (such as, but not limited to: suppliers), can also be invoked by NWO-I against the Customer.
- 12.7 The Customer indemnifies NWO-I against third-party claims for compensation of damage, for which NWO-I's liability in these General Terms and Conditions in the relationship with the Customer is excluded.

## **13 Force majeure**

- 13.1 Force majeure includes, in addition to the provisions of Section 6:75 of the Dutch Civil Code: strikes, transport or operational failure, government measures, theft, fire, acts of war and breach of contract by suppliers or other third parties engaged by NWO-I for the fulfilment of its obligations.
- 13.2 NWO-I also has the right to invoke force majeure if the circumstance impeding (further) compliance commences after NWO-I should have fulfilled its obligations under the agreement.
- 13.3 During force majeure, the obligations of NWO-I under the agreement are suspended. If the period, in which fulfilment of NWO-I's obligations is no longer possible due to force majeure, lasts longer than 3 months, both Parties shall have the right to terminate the agreement without any obligation to pay compensation or to reverse.

## **14 Retention of Title**

- 14.1 The products delivered by NWO-I remain the property of NWO-I until the Customer has fulfilled all the obligations towards NWO-I, both with regard to the delivery in question and to deliveries and services provided earlier or later.
- 14.2 Products delivered by NWO-I that pursuant to paragraph 14.1 are subject to retention of title, may only be resold in the course of the Customer's normal business activities. The Customer does not have the right to pledge the products or to create any other right to the products.
- 14.3 If the Customer fails to fulfil its obligations towards NWO-I or if there is a justified fear that it will fail to do so, NWO-I has the right to remove the delivered products to which the retention of title referred to in article 14.1 applies, or to have these removed from the premises of the Customer or third parties holding the products for the Customer, including any necessary dismantling. The Customer shall fully cooperate with the above, subject to a fine of 10% of the sales value (excluding VAT) of the products in question, per day or part

of a day in which the Customer remains negligent in this respect, without prejudice to the right of NWO-I to full compensation.

## **15 Termination of the agreement**

- 15.1 Notwithstanding NWO-I's statutory rights, NWO-I has the right to suspend further execution of the agreement, or to terminate the agreement, all without prejudice to NWO-I's right to claim damages, in the event of:
- noncompliance by the Customer with an enforceable obligation;
  - the Customer being declared insolvent or if a petition to this effect has been submitted to the court;
  - the Customer applying for suspension of payments or if the Customer has been granted suspension of payments;
  - the Customer's company being shut down or wound up;
  - attachment of the Customer's goods or if the Customer loses the right to dispose of its property.
- 15.2 NWO-I has the right to terminate the agreement when circumstances occur relating to persons and/or materials (usually) engaged by NWO-I to execute the agreement, of such a nature that execution of the agreement has become impossible and/or problematic and/or disproportionately expensive to such an extent that execution of the agreement may not reasonably be demanded.
- 15.3 If NWO-I already in part fulfilled its obligations when the situation referred to in article 15.2 occurred or is only able to fulfil its obligations in part, NWO-I will have the right to separately invoice the part already delivered and/or the part than can be delivered and the Customer will be held to pay the relevant invoice as if it were a separate agreement. However, this does not apply if the part already delivered and/or the part than can be delivered has no independent value.

## **16 Taking over personnel**

- 16.1 The Customer does not have the right without written permission from NWO-I, during the execution of the agreement and within 1 year of termination thereof, to employ personnel with an appointment for an indefinite period of NWO-I who in any manner are involved in the execution of the agreement or to negotiate with the personnel on employment.

## **17 Intellectual property**

- 17.1 Any intellectual property rights, including the right to make an application for registration of such rights, that are or will be created in connection with or arising from the products or services provided by NWO-I to the Customer, remain with NWO-I or its licensors.
- 17.2 The products and services as referred to in article 17.1 also include the models, samples, images, drawings, diagrams, manuals, software and the like made available by NWO-I to the Customer.
- 17.3 NWO-I grants the Customer a non-transferable, non-exclusive licence for the use of the rights referred to in article 17.1, insofar as reasonably necessary for the use of the products and the results of the services provided by NWO-I in the context of the Customer's normal business activities.
- 17.4 By way of derogation from article 17.1, NWO-I and the Customer may agree in writing that the intellectual property rights as referred to in article 17.1 will accrue to the Customer. This will be on the condition that NWO-I obtains a non-transferable, non-exclusive licence to use these rights for research and teaching purposes.
- 17.5 Even though NWO-I will exercise the utmost care when providing products and services, NWO-I cannot guarantee that the products or results of the services do not contain errors or omissions and/or that these will not infringe the intellectual property rights of third parties. NWO-I is not liable for such errors or omissions. NWO-I will consequently only accept legal liability for compensation to the extent as ensuing from article 12.

## **18 Confidentiality and secrecy**

- 18.1 The Parties undertake to maintain confidentiality regarding everything they have become aware of in the execution of the agreement of a confidential nature or of which the Parties should reasonably have recognized the confidential nature.

**19 Miscellaneous provisions**

- 19.1 If the Customer and/or its personnel are on the premises or in, on or near the buildings or installations of NWO-I, they shall comply with the instructions of NWO-I. The Customer shall require its personnel to comply with said instructions.
- 19.2 NWO-I is in no way liable for any injuries or damage incurred by the Customer, its personnel and/or to its goods, during the stay on the premises or in, on or near the buildings or installations of NWO-I, except where an insurance taken out by NWO-I pays out an amount in this case.
- 19.3 NWO-I may require from the Customer that in connection with the execution of the agreement, it appoints a contact person with whom NWO-I can maintain all contacts related to the agreement.
- 19.4 The rights and obligations of the Customer under an agreement with NWO-I are only transferable with prior written permission from NWO-I and NWO-I may attach conditions to this permission.

**20 Applicable law and competent court**

- 20.1 Dutch law applies to all offers from, and agreements with, NWO-I with exclusion of the Vienna Sales Convention.
- 20.2 The Midden-Nederland District Court, Utrecht location, shall have exclusive jurisdiction to settle any disputes between NWO-the Customer, on the understanding that NWO-I also has the right to summon the Customer to appear before the court competent according to the law and I.