

# General Terms and Conditions

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1 September 2012



WAGENINGEN **UR**  
*For quality of life*

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**These General Terms and Conditions (the “General Conditions”) have been drawn up by Wageningen University and Stichting Dienst Landbouwkundig Onderzoek [DLO 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 UR, as well as all information generated by the client or Wageningen UR outside the scope of the Research.

**Offer:** the offer from Wageningen UR to the client to carry out activities in accordance with a Research Plan for a certain price.

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

**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 UR:** Wageningen University & Research centre, a collaboration between several legal entities, namely Wageningen University and Stichting Dienst Landbouwkundig Onderzoek. In these General Conditions the name “Wageningen UR” 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 Dienst Landbouwkundig Onderzoek, research institutes:**

- Food and Biobased Research;
- Wageningen UR Livestock Research;
- Alterra;
- Plant Research International;
- Applied Plant Research;
- LEI;
- Wageningen UR Centre for Development Innovation;
- RIKILT;
- Central Veterinary Institute;
- IMARES.

#### 1.2

A contract is concluded at the moment that an Offer made by Wageningen UR 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 Wageningen UR. If with the consent of the client Wageningen UR 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 Wageningen UR unless a term of acceptance is specified.

#### 2.2

The use or disclosure by the client of the knowledge and ideas of Wageningen UR 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

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part of the contract. Should parties expressly agree in writing to such investigations, Wageningen UR accepts no liability whatsoever for the content and results thereof.

## **Article 3**

### **Performance of the contract**

#### **3.1**

In performing the contract, Wageningen UR 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 Wageningen UR. If Wageningen UR foresees that a time limit will be exceeded significantly, then Wageningen UR will notify the client in order to come to a solution.

#### **3.3**

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

#### **3.4**

Wageningen UR is entitled to replace employees who perform the activities with other employees. Wageningen UR 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, Wageningen UR shall keep items, including samples or the remains thereof, supplied to Wageningen UR 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, Wageningen UR is free to take appropriate measures at the expense of the client.

## **Article 4**

### **Reporting**

#### **4.1**

Wageningen UR 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 Wageningen UR.

## **Article 5**

### **Price and payment**

#### **5.1**

All amounts specified by Wageningen UR 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. Wageningen UR 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, Wageningen UR may require payment in advance and/or issue interim invoices.

Invoices issued by Wageningen UR 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

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Wageningen UR 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. Wageningen UR 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, Wageningen UR 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 Wageningen UR 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 Wageningen UR, and in that regard Wageningen UR foresees a significant risk to persons, property, the environment or public health. In such cases, Wageningen UR shall, if possible, consult with the client before disclosing the Confidential Information.

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## **Article 7** Rights to Results

### **7.1**

Wageningen UR 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 Wageningen UR.

### **7.3**

The results derived under the contract are the intellectual property of and belong to Wageningen UR. 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**

Wageningen UR is entitled to use the results derived under the contract for internal research and educational purposes. After the delivery of a Report, Wageningen UR 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. Wageningen UR retains the copyrights thereto and grants the client the right to duplicate Reports for internal use.

## **Article 8** Publication

### **8.1**

Wageningen UR is entitled to disclose the Results, in compliance with the provisions of Article 6. During the term of the Research, Wageningen UR 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 Wageningen UR 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 Wageningen UR, for the purpose of investigating the possibility of applying in its own name for protection of the Results in question.

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Disclosure of the Results may be postponed for a period of two (2) months. If, pursuant to any further agreement between the client and Wageningen UR, 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, Wageningen UR 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 Wageningen UR without the prior written consent of Wageningen UR. 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 Wageningen UR 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, Wageningen UR 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 Wageningen UR 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 Wageningen UR.

### **10.2**

Wageningen UR 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**

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

### **10.4**

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

### **10.5**

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

## **Article 11** Force majeure

If either Wageningen UR 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:

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- a. if the other party is declared bankrupt or granted suspension of payments, or if an application to that end is filed;
  - b. if the other party's business is liquidated or discontinued;
  - c. 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 Wageningen UR. Such consent will not be refused on unreasonable grounds.

## **Article 14**

### **Disputes**

#### **14.1**

The contract and the legal relationship between Wageningen UR 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.