



## GENERAL TERMS AND CONDITIONS OF AGROTECHNOLOGY AND FOOD INNOVATIONS B.V.

### 1 Definitions and applicability

#### 1.1

The following definitions are used in these General Terms and Conditions:

- A&F: Agrotechnology and Food Innovations B.V., situated in Wageningen, as well as all affiliated business entities that make use of these General Terms and Conditions;
- Customer: the party which enters into an agreement with A&F;
- Agreement: the agreement for the execution of the Activities by A&F, described in the Quotation;
- Activities: the execution of Research and/or the supply of products and services, all in the broadest sense of the word;
- Quotation: the offer of engagement by A&F to the Customer to carry out Activities for a certain price;
- Research Work Plan: the schedule that sets forth the Activities which will be performed with regard to the Research upon which the Customer and A&F have reached agreement. Part of the Research Work Plan will be the project budget, which is the estimated budget of the costs that of the Research;
- Research: the Research to be carried out by A&F on the basis of the Research Work Plan;
- Research Results: the intended results generated during the Research, to the extent as set forth in writing in the Report(s);
- Report: a written document, indicated as such, including the description of the performed (part of the) Research and/or Activities as well as Research Results and/or findings, if any;
- Party: A&F and Customer solely and collectively referred to as Parties.

#### 1.2

These General Terms and Conditions will apply to all Quotations and all Agreements with A&F for the performance of Activities. These General Terms and Conditions will apply with the explicit exclusion of the (general) conditions of the Customer whatever they may be called.

#### 1.3

These General Terms and Conditions have been determined by A&F and have been registered with the Chamber of Commerce in Arnhem (deposit number 09113181).

### 2 Quotations

#### 2.1

All Quotations, offers, tenders and such like are free of engagement unless they contain an expiry date for their acceptance.

#### 2.2

The Customer shall only make use of the Quotation(s) and/or Research Work Plan(s), submitted by A&F, including A&F's knowledge and/or ideas which it contains, for the purpose of evaluating its interest in concluding an Agreement.

### 3 Execution of the Agreement

#### 3.1

By entering into the Agreement, A&F commits itself by carrying out the Agreement to endeavour to obtain a usable result for the Customer.

#### 3.2

Agreements will be carried out in accordance with the Quotation. If it concerns Research then it will be carried out in accordance with the Research Work Plan.

#### 3.3

All timeframes and/or delivery dates, mentioned in the Quotation or Research Work Plan, are estimates, unless otherwise agreed upon in writing. Exceeding such a time frame or delivery date will not result in default. If a planned date is or is expected to be exceeded, A&F will notify the Customer as soon as possible and A&F can, in consultation with the Customer, agree to a revised planning.

#### 3.4

In the event that (part of) the Agreement consists of the delivery of a material good, A&F gives no further guarantee for such material good other than described in the Quotation. These material goods will only be delivered for the purpose as described in the Quotation and are not food grade, unless stated otherwise. Unless otherwise stated, A&F delivers ex works in accordance with the Incoterms of 2000.

#### 3.5

In the event that the Agreement (partly) concerns the testing of samples, only the Customer will bear responsibility for the selection, its representative nature, the marking of codes, brand or product name and for making the samples available to A&F for research, unless it is expressly agreed that sample-taking will take place under the responsibility of A&F.

#### 3.6

A&F is not obliged to commence with the Agreement before all materials or goods to be made available to A&F by the Customer or on behalf of the Customer, actually have been made available to A&F in the agreed form, number and/or quality. Any delays caused as a result of the above entitles A&F to determine a revised planning and to prolong the term by at least the period of delay.

#### 3.7

Each Party shall notify the other Party of any occurrences during the performance of the Agreement which are in the opinion of that Party of importance to the other Party.

### 4 Price and Payment terms

#### 4.1

If a fixed price is included in the Quotation, this price will apply as the agreed price. If there is no fixed price included in the Quotation, then it is agreed between the Customer and A&F that the sum to be paid will be determined by subsequent calculation at the agreed A&F rates. All mentioned prices are exclusive of VAT and any other applicable taxes or duties. Furthermore A&F is entitled to increase the price related to the part of the Agreement not yet performed with a maximum of five percent (5%) as per 1 January of each year.

#### 4.2

Costs for extra work can only be additionally charged, if the Customer agrees with these additional costs in writing. Cost made by A&F due to delays, which are not attributable to A&F, can be additionally charged to the Customer.

#### 4.3



The Customer will remit the price of the Agreement in instalments, according to the invoicing schedule as set forth in the Quotation. A&F will send out invoices, which shall be paid by the Customer within thirty (30) days of the invoice date. The moment that A&F's bank account will be credited with the applicable invoiced amount will be the moment of payment. In the event that there is no invoicing schedule determined, A&F will invoice every two (2) calendar months.

#### **4.4**

If payment of an invoice is not made within thirty (30) days of the invoice date, according to clause 4.3, then A&F is entitled to increase the amount to be paid in settlement of the invoice by 1,25% per (part of) thirty (30) day period after the date by which the invoice should have been paid. This increase shall be applied until the invoice, plus any increases incurred through late payment, is paid in full. In addition A&F can recover on the Customer any and all extrajudicial and judicial costs of collection of outstanding payments, which extrajudicial costs will at least be ten percent (10%) of the outstanding payments, with a minimum of thousand Euro (€1000), exclusive of VAT.

#### **4.5**

A&F will retain possession of all goods which A&F makes available to the Customer in the context of the Agreement, including the material goods as meant in clause 6.4 until all amounts owed by the Customer to A&F are paid in full. Any grant or assignment of rights only occurs under the suspended term that all amounts due to A&F are paid in full.

If to A&F's judgement not all or entire amounts will be paid by the Customer, A&F will be entitled to make free use of the goods and rights as set forth above. In addition, in such case A&F is not bound anymore to the confidentiality obligations as determined in clause 8.

### **5 Reporting**

#### **5.1**

A&F will, in conformity with the Quotation or the Research Work Plan, report to the Customer the state of activities, the progress of the Activities and the Research Results, if any. Furthermore, A&F will at the reasonable request of the Customer to the best of its ability, provide the Customer with information with regard to specific issues, steering and development related to the Activities. This will be done through progress meetings.

#### **5.2**

The (interim) Reports and/or Research Results that have been delivered to the Customer, within the scope of the Agreement, shall be deemed to be accepted within four (4) weeks after receipt in case A&F has not received written notice of the Customer of non acceptance.

### **6 Proprietary rights and Research Results**

#### **6.1**

The (intellectual) property rights related to the Research Results and the content of the Reports will vest in A&F. Subject to clause 4.5 above, the Customer will receive a non-exclusive, non-transferable license to use the Research Results – or in case of consultancy – the content of the Report(s) limited to the area as described in the Research Work Plan or the Quotation.

Models, techniques, methods, instruments, including software and other information and/or knowledge are and remain the property of A&F.

#### **6.2**

Knowledge which was already in possession of A&F before the starting date of the Agreement remains property of A&F.

#### **6.3**

If and insofar the Research Results are, at any point of time, eligible for filing patent applications, only A&F will be entitled to file a Dutch, European or PCT patent. In the event the patent will be granted, the Customer could receive a non-exclusive license to use the patent for the area as described in the Research Work Plan and under the conditions further to be agreed in a license agreement.

#### **6.4**

Reports, drawings, Quotations, Research Work Plans and other material matters, in which the commissioned Activities result will become the property of the Customer, without prejudice to the stipulation of clause 4.5 and subject to A&F's copyright which allows the Customer only to copy these material matters for internal use.

### **7 Publication of Research Results**

A&F is entitled to publish or disclose the Research Results, however A&F will observe the confidentiality obligation as set forth in clause 8.1. A&F will notify the Customer in writing of such intention. The copyright on the publication shall vest in A&F.

### **8 Confidentiality**

#### **8.1**

Parties agree that any and all information regarding Parties' (research) business - disclosed during the Activities, in whatever format - shall be deemed confidential if the nature of the information is confidential and of which the other Party reasonably knows or should know that that information is confidential (such as, but not limited to, technical, commercial, financial and legal data/information). Parties agree that they will treat the confidential information in confidence and they shall not, without the prior written consent of the other Party, use or disclose the confidential information to any third party. This obligation will remain in force and effect for three (3) years as of the date of the final invoice sent by A&F to the Customer for the concerned Activities.

#### **8.2**

The obligation to maintain secrecy as set forth in the previous clause 8.1 shall not apply to knowledge for which Parties can prove that:

- it had been available to them already before the Activities were started;
- it is or, since the Activities were started has become, publicly known, through no fault of the Party involved;
- it is developed independently of the received information;
- it is received from third parties and, to the best of knowledge of the receiving Party, has not originated from the other Party;
- it is to be disclosed pursuant to the Agreement or requirement of a court, administrative agency or other governmental body, provided that each Party shall provide the other Party with prompt notice of such Agreement or related proceeding to afford the other Party an opportunity to intervene and prevent the disclosure.

### **9 Rescission and termination of the Agreement**

#### **9.1**

In case one of the Parties should fail to meet an obligation resulting from the Agreement, the Party concerned will,



after having been given notice of default, have the possibility to meet the obligation within a reasonable term. If this is not fulfilled within the said term, the other Party is entitled to rescind the Agreement without observing a notice period, by means of registered mail, without

prejudice to the right of compensation. Furthermore any and all account receivables of the terminating Party towards the Party in default will be immediately due and payable.

#### **9.2**

Parties have the right to terminate the Agreement, by registered mail, with immediate effect:

- a. in the event the other Party is in state of bankruptcy or suspension of payment or a petition to that effect is filed by or against that Party;
- b. in the event the business of the other Party will be wound up or closed down;
- c. in case of force majeure - as determined in clause 15 below - if the force majeure situation will last over ninety (90) days.

Furthermore A&F is entitled to terminate the Agreement in the event the control of the business of the Customer will be transferred, directly or indirectly, to a third party.

#### **9.3**

If at the time of such rescission as is referred to in clause 9.1 the Customer has already received any performance in the execution of the Agreement, such performance and the payment obligation connected therewith shall be incapable of being undone unless A&F is in default with respect to such performance. Any amounts invoiced by A&F before the rescission in connection with what already is performed or delivered by the same in execution of the Agreement shall remain fully due and shall become immediately payable upon rescission.

#### **9.4**

In the event of (premature) termination or rescission, the Parties will remain bound by those clauses of these General Terms and Conditions, which have the purpose to survive the termination of the Agreement.

### **10 Liability**

#### **10.1**

A&F accepts statutory obligations of liability to the extent as set forth in this clause 10.

#### **10.2**

The liability of A&F for damages of the Customer is in any case limited to direct damages up to a maximum of fifty percent (50%) of the invoiced and paid amounts of the Agreement to which the damages relate.

#### **10.3**

A&F shall in no case be liable for any indirect, incidental or consequential damages (including without limitation, lost business or profits, loss of data or loss of use of equipment). A&F shall not be liable toward the Customer for any claims, costs or damages that may result, directly or indirectly, out of the executed Agreement and/or the use of the Research Results, unless and to the extent that damage is caused by gross fault and/or due to wilful misconduct by an executive of A&F.

#### **10.4**

A&F shall not accept liability for damages which result from defects in the goods supplied to A&F which are subsequently supplied by A&F to the Customer, unless

and to the extent that A&F can recover such damage from its supplier.

#### **10.5**

The Customer shall indemnify and hold A&F harmless from any third-party claims, including claims regarding product liability, arising from the Agreement executed by A&F on Customer's request and/or the use by the Customer of the Research Results delivered by A&F.

#### **10.6**

Any claims of the Customer in respect of this clause needs to be expressly notified to A&F as soon as possible but in any case within one (1) year after the date of the final invoice of the applicable Agreement, in absence of which any claim will lapse completely.

### **11 Storage**

Unless agreed otherwise at the time that the Agreement is issued, A&F shall, if reasonably possible, store the goods including samples or their remains which have been made available to A&F in the scope of the Agreement, for two (2) weeks after the date upon which the Customer is notified of the Research Results. Any costs that this may incur will be deemed to be included in the price quoted in the Quotation. In the event that the Customer has not made an arrangement for the return of said goods by the end of said two (2) week period, A&F will be entitled to take suitable measures. Any costs that this may incur including costs which are incurred as a result of the prolonged storage will be charged to the Customer and the goods will be at the risk of the Customer.

### **12 Transport and return of goods**

#### **12.1**

The Customer is obliged to fully co-operate on the delivery of the goods and/or services to be delivered by A&F pursuant to the Agreement. The Customer shall be in default, even without having been summoned or having been giving notice of default, in the event that and as soon as he does not collect the goods to be delivered at A&F's first request or, in the event that delivery at the address of the Customer has been agreed upon, refuses to take receipt of the goods to be delivered. Should this be the case, then A&F shall be free to take appropriate measures, such on the account and at the risk of the Customer.

#### **12.2**

In the event that A&F at the request of the Customer arranges the transport of the goods to be delivered, then A&F is free to choose the packaging, the means of transport and the route to be taken or the transport insurance to be taken out. The transport shall take place on the account of and at the risk of the Customer unless the Parties have agreed otherwise in writing.

#### **12.3**

A&F is entitled to keep goods, that are (partly) property of the Customer, in its possession as long as the Customer has not fulfilled its payment obligations.

### **13 Modifications**

Modifications, changes, supplements to and extensions of the Quotation, Agreement, Research Work Plan, Activities or these General Terms and Conditions are only binding after these have been agreed upon in writing between the Customer and A&F.

### **14 Assignment**

The rights and obligations as determined in the Agreement and these General Terms and Conditions may not be



assigned by either A&F or the Customer without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The above mentioned will not apply in case of assignment by A&F to its legal successor(s).

#### **15 Force Majeure**

In case of force majeure the concerning Party is entitled to suspend the obligations for the duration and extent of the force majeure, provided that the other Party has been notified in writing of the force majeure. Force majeure situations will concern those situations which prevent the execution of the Activities or the Agreement and which are not imputable to the concerning Party pursuant to law, the Agreement or according to generally accepted standards and as a result will not be attributable to that Party.

#### **16 Takeover of personnel**

The Customer is not allowed to employ or to directly offer activities to A&F employees that are involved in the Activities, such on pain of an immediately due and payable penalty of forty five thousand Euro (€ 45.000,-) for each

violation. This obligation will remain in force and effect during the performance of the Activities as well as during a period of one (1) year following completion of the Activities.

#### **17 Severability**

The invalidity or unenforceability of any particular provision of these General Terms and Conditions shall not affect any other provisions therein. The General Terms and Conditions shall be construed in all respects as if such invalid or unenforceable provision were omitted.

#### **18 Governing law**

##### **18.1**

These General Terms and Conditions shall be exclusively governed by Dutch law.

##### **18.2**

All disputes which may arise from the Agreement, or from the execution of the Agreement will be submitted to the competent court in A&F's district.

*These General Terms and Conditions have been registered with the Chamber of Commerce in Arnhem and have been included on the Agrotechnology and Food Innovations B.V. website [www.agrotechnologyandfood.wur.nl](http://www.agrotechnologyandfood.wur.nl).*