

Article 1 : Definitions

1. In these general terms and conditions the following terms shall be construed to have the following meanings, unless explicitly stated otherwise.

User: the user of the general terms and conditions
Customer: the other party
Agreement: the agreement to provide goods or services, such as research, consultancy or training programmes

Article 2 : Introduction

1. These general terms and conditions shall be applicable to each offer, quotation and agreement between user and a customer which has been declared subject to these general terms and conditions by user, in as far as parties have not explicitly agreed in writing to deviate from these general terms and conditions.
2. These general terms and conditions shall equally be applicable to all agreements with user for whose fulfilment third parties must be engaged.
3. Any deviations from these general terms and conditions shall only be legal if agreed explicitly and in writing.
4. The applicability of any purchasing or other terms and conditions of customer is hereby explicitly rejected.
5. If one or more of the provisions in these general terms and conditions should be invalid or should be made invalid, the other provisions in these general terms and conditions shall remain in full force. In such event user and customer shall enter negotiations in order to establish new provisions to replace the provisions that are invalid or have been made invalid, whereby if and in as far as possible purpose and purport of the original provision shall be observed.
6. Wherever in these general terms and conditions supplements to articles are mentioned they are literally supplements relating to the type of service stated in that place. The articles and the sections of the articles shall be valid in respect of all services offered by user separately from these supplements.

Article 3 : Offers and quotations

1. All offers are without obligation. The offer shall be based on the information provided by customer.
2. The offers made by user shall be valid for the period of a fortnight, unless stated otherwise. User shall only be bound to the offer once the agreement accepted by customer has been confirmed in writing by user.
3. Prices stated in the afore-mentioned offers are excluding VAT and other duties imposed by government, as well as costs incurred in the fulfilment of the agreement, including postage, administrative charges, travelling and accommodation expenses, costs of materials, catering costs and supporting facilities, etc., unless stated otherwise.
4. A composite quotation shall not oblige user to carry out a part of the assignment for payment of a proportional part of the quoted amount.
5. Offers shall not automatically extend to future assignments.
6. User shall have the right if he is not granted the assignment or the performance of work to charge to customer all costs (including labour costs) incurred in preparing the offer. The provisions of articles 8, 9 and 14 shall in this respect be equally applicable.

Article 4 : Fulfilment of the agreement

1. User shall fulfil the agreement to the best of his knowledge and ability and in accordance with good professional practice.
2. If and in as far as a proper fulfilment of the agreement such requires user shall have the right to engage third parties to perform out certain activities, for which purpose a separate agreement shall be concluded between customer and third party.
3. Customer shall be responsible for providing all information and / or basic materials which user declares to be required or which customer should within reason understand to be required for the fulfilment of the agreement to user in due time and in the fashion preferred by user. If the information required for the fulfilment of the agreement should not be made available to user in due time, user shall have the right to suspend the fulfilment of the agreement and / or to charge the additional costs ensuing from the delay to customer according to the usual rates.
4. If it was agreed that the agreement shall be fulfilled in phases, user shall have the right to suspend the activities leading up to the next phase until customer has approved the results of the preceding phase in writing.
5. If third parties engaged by user or customer perform activities within the framework of this agreement on the location of customer or on a location chosen by customer, customer shall provide free of charge the facilities required by these parties within reason.

Article 5 : Amendment of the agreement

1. If during the fulfilment of the agreement it becomes apparent that for a proper fulfilment the activities to be performed must be adjusted or added to, parties shall make these adjustments and additions in due time and in mutual consultation.
2. If parties agree on adjustments or additions in respect of the agreement, the moment of fulfilment and / or the commencement of particular phases may be affected. User shall notify customer thereof without delay.
3. If the adjustment of or addition to the agreement should have financial and / or qualitative consequences, user shall inform customer thereof in advance.
4. If a fixed fee was agreed, user shall state to what extent the adjustment of or addition to the agreement will cause the fee to be raised.

Article 6 : Duration, term of fulfilment

1. If the agreement between user and customer is concluded for a particular duration, the agreement shall on expiration be continued on equal terms, unless either of parties has cancelled the agreement three months prior to expiration.
2. If the agreement between user and customer is concluded for a particular number of hours, this agreement shall expire after this particular number of hours, whereby user's administration thereof shall prevail in all events. If on expiration the services are continued, this shall be on equal terms.
3. If within the duration of the agreement a term for the completion of activities and / or the frequency of activities was agreed, this shall in no event be considered to be a fatal term and / or frequency in respect thereof. In the event of excess of the term of fulfilment and / or frequency of activities, customer shall be obliged to notify user of default in writing.

Article 7 : Remuneration

1. Parties may either agree on a fixed fee when concluding the agreement or on a fee based on the number of actual hours of work, realised input.
2. The fee shall in no respect be dependent on putative expectations in respect of the fulfilment of the agreement.
3. User shall have the right to agree on forms of merit payment, in addition to the agreed fixed fee.
4. Customer shall be obliged to pay a remuneration, to be agreed upon, for the right of application of the know-how provided by user within his business.
5. Fees, license fees, and cost estimations shall all be exclusive of VAT.
6. User shall have the right to increase the amounts referred to in section 5 on an annual basis.
7. Furthermore, user shall have the right to increase the amounts referred to in section 5 prematurely when in the fulfilment of the agreement it becomes apparent that the originally agreed or expected quantity of work, or the prices of e.g. materials, communication, mobility, certain facilities or the like was estimated incorrectly to such an extent in concluding the agreement, and such can not be considered the responsibility of user, that user may within reason not be expected to perform the agreed activities for the originally agreed remuneration.
8. In the event of a rise in prices, customer shall have the right to cancel the agreement if the amounts referred to in section 5 are increased within two months after concluding the agreement. After such period customer shall have the right to cancel the agreement if the increase exceeds 10 %. Customer shall not be allowed to cancel the agreement if the increase of fees or prices ensues from any legal title.
9. User shall notify customer of the intended increase of fees or prices in writing. User shall hereby state the magnitude of the increase and the date of commencement.
10. If customer wishes to exercise his right to cancel as referred to in section 8, he shall be held to do so within seven working days after the notification as referred to in section 9 prior to date of commencement of the increase of fees or prices stated in the notification by user.

Article 8 : Payment

1. User shall invoice on a monthly basis during the fulfilment of the agreement for costs incurred, fees and payable license fees.
2. User shall have the right to invoice for costs to be incurred, fees and payable license fees in advance.
3. Payment must be made within 8 days after invoice date, in a fashion to be determined by user, in the currency of the invoice. Objections to the amounts of the invoices shall not constitute a suspension of the obligation to make payment and shall not entitle customer to any form of settlement.
4. User shall have the right to request an authorisation for collection from customer whereby customer shall be obliged to provide such credit balance on the account at issue that collection as agreed can indeed be made.
5. If customer should fail to make payment within the term of 8 days, he shall be deemed in default by virtue of law. Customer shall in such event be obliged to pay an interest of 1.5 % per month until full payment including interest and costs has been made.
6. In the event of liquidation, bankruptcy, seizure or moratorium of customer the claims of user on customer shall be payable without delay and user shall have the right to cancel the agreement in writing with immediate effect.
7. Without prejudice to the above provisions user shall have the right to keep in his possession all that was acquired from customer in the fulfilment of the agreement until user has received full payment.

Article 9 : Collection charges

If customer should be in default or should fail (timely) to fulfil his obligations, all costs incurred in receiving payment in and out of court shall be borne by customer.

Article 10 : Complaints

1. Any complaints from customer in respect of an invoice amount must be lodged with user in writing within five days after invoice date, failing such customer shall be deemed to have approved the invoice. Any complaint shall not constitute suspension of the obligation to make payment.
2. Any complaints in respect of activities performed must be lodged with user in writing within 48 hours after discovery and at the last within five days after completion of the activities at issue, failing such customer shall be deemed to have approved the performed activities.
3. Any complaints or dimness in respect of supplied information or advices must be lodged with user in writing within 48 hours after supplying.
4. A complaint must contain a description that is as detailed as possible so that user may react adequately.
5. If a complaint should be valid, user shall still perform the activities as agreed, unless this has become of no demonstrable use to customer. The latter must be notified by customer in writing simultaneously with the lodging of the complaint.
6. If the performance of the activities is no longer possible or of no use, user shall be liable only in compliance with the provisions of article 14.

Article 11 : Termination

1. If the agreement should be prematurely terminated by customer, user shall have a right to compensation for the arising and demonstrable loss of occupation, unless facts and circumstances have led to the termination that may be deemed the responsibility of user. Furthermore, user shall in such event be under the obligation to pay the invoices for activities performed up to that moment. The provisional results of the activities performed up to that moment shall be made available to customer under reserve.
2. If the agreement should be prematurely terminated by user, user shall in consultation with customer see to transfer of the activities still to be performed to third parties, unless there are facts and circumstances that have led to the termination that are to be deemed the responsibility of customer.
3. If the transfer of the activities should bring extra costs to user, they shall be charged to customer.

Article 12 : Cancellation

1. User shall have the right to cancel the agreement or have it cancelled if:
 - Customer remains in default in respect of any obligation arising from this agreement – despite written notice thereof;
 - Circumstances arise that are of such nature that the fulfilment of the agreement is impossible or can no longer within reason be required, or
 - Other circumstances arise that are of such nature that unaltered continuation of the agreement can not within reason be expected.
2. If the agreement should be cancelled the claims of user on customer shall become payable without delay.
3. User shall in all events retain the right to claim compensation, including profits to be made.

Article 13 : Restitution of goods

1. If user in the fulfilment of the agreement has made goods available to customer, customer shall be under the obligation to return the borrowed goods within 5 days (after completion of the activities either or in the event of suspension or cancellation of the agreement) in their original condition, free of defects and in completeness. If customer should fail to fulfil this obligation all ensuing costs shall be borne by him. If customer, for whatever reason, after written notice in respect thereof, should still fail to fulfil the obligation referred to in section 1, customer shall owe all ensuing damages and costs and user shall have the right to recover these costs from customer, including the costs of replacement.
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Article 14 : Liability

1. User shall only be liable towards customer for direct damages suffered by him as a consequence of culpable shortcomings if and in as far as these could have been avoided under normal circumstances and with normal alertness, all this in compliance with the provisions of this article.
2. If user should be liable for damages, this liability shall be limited to a maximum of one time the invoiced amount in respect of the fee relevant to that part of the assignment to which the liability pertains. If the agreement should mainly be an agreement of duration with a duration of more than one year, the liability shall be limited to the total amount of the stipulated compensations (excluding VAT) for one year and for that part of the assignment to which the liability pertains. The liability of user for damages shall in all events be limited to a maximum amount of € 50,000.00.
3. In contravention to the provisions of section 2 of this article, the liability in the event of an assignment with a duration exceeding two months shall be further limited to the part of the fee payable on the last two months.
4. Direct damages shall be construed to be:
 - Reasonable costs for the assessment of the cause and the volume of the damages in as far as the assessment pertains to the damages within the meaning of these provisions;
 - Any reasonable costs incurred in making the imperfect performance by user comply with the agreement, unless user can not be deemed culpable.
 - Reasonable costs incurred in preventing or limiting damages, in as far as customer demonstrates these costs have led to limitation of direct damages as meant in these general terms and conditions.
5. User shall not be liable for other damages apart from the liabilities mentioned in sections 1 – 4, irrespective of the grounds on which a claim for compensation would be based. Consequently, user shall not be liable:
 - For damage to, perdition or loss of, late arrival or non-arrival of information and documents during transportation (bicycle, car, foot, etc.) or during shipment thereof by post, e-mail or in whatever fashion this is done whether by or by order of customer, user or third parties;
 - For goods that are merely passed on to user;
 - For damage, of whatever nature, caused by user basing himself on information provided by customer that was incorrect and / or incomplete;
 - For damage, of whatever nature, caused by the mutual communication, for whatever reason, being realised in an imperfect fashion, being hindered, and / or being interrupted prematurely and for some period of time for whatever (technical) reasons;
 - In the event of acting or failure to act on the part of customer, contractors, suppliers or assisting personnel, directly or indirectly involved with the agreement or the 'damage case', or;
 - For indirect damage, including damages caused by stand-still experienced by user or by customer, whereby the reason of such stand-still shall be considered to be of no relevance.
6. Liability of user as meant in section 1 shall only arise if customer gives due notice of default in writing to user without delay. The notice shall contain a description of the shortcomings that is as detailed as possible of the shortcomings, so that user may be able adequately to make good the shortcomings.

Article 15 : Indemnities

1. Customer shall indemnify user and / or persons engaged by him against claims from third parties, unless in the event of wilfulness or gross culpability on the part of user and / or persons engaged by him.
2. If customer makes available to user information carriers, electronic files or software, etc., he shall guarantee that these information carriers, electronic files or software are free of viruses and defects.

Article 16 : Transfer of risk

1. The risk of loss of or damage to goods that are object to the agreement, shall be transferred to customer at the moment such are transferred to customer legally and / or factually and so come to be within the power of customer or third parties appointed by customer.

Article 17 : Force majeure

1. For the purposes of these general terms and conditions force majeure shall be construed to be, in addition to what is stipulated in respect thereof by law and jurisprudence, all external causes, whether foreseen or not, that lie without the powers of user but that preclude user from fulfilling his obligations. This shall be understood to include stand-still in the business of user, for whatever reason.
2. User shall also have the right to appeal for force majeure if the circumstance precluding his (further) fulfilling his obligations arises after user should have fulfilled his obligations.
3. Parties shall be allowed to suspend the obligations ensuing from the agreement for the period that the force majeure continues to exist. If this period should be longer than two months each party shall have the right to terminate the agreement, without obligation to pay damages to the other party.
4. In as far as user has partially fulfilled his obligations ensuing from the agreement at the time that the force majeure arises or shall be able to fulfil these, and the part that has been fulfilled or is to be fulfilled respectively may be attached value to, user shall have the right to invoice for the part that has been fulfilled or is to be fulfilled separately. Customer shall be under the obligation to make payment as if a separate agreement were concluded.

Article 18 : Duty of confidentiality

1. Due care shall be observed by customer and user to prevent unauthorised disclosure of and unauthorised use of confidential information provided by parties to each other in the course of the fulfilment of the agreement.
2. Both parties shall be under the obligation to observe secrecy in respect of all confidential information obtained from each other or from any other source within the framework of the agreement. Information shall be deemed to be confidential if such is notified by the other party or if this ensues from the nature of the information.
3. Each party shall impose secrecy on his own personnel and on other persons engaged by him from which it shall be apparent that the acquired knowledge may not be put to use for the benefit of other businesses. Parties shall be authorised to peruse the agreed provisions in respect hereof and to investigate their quality.
4. If, by force of law or a court order, user is held to also provide confidential information to any third party determined by law or appointed by the court and if user can not exercise a right of exemption as provided by law or recognised by the competent court, user shall not be under the obligation to pay damages or compensation and the other party shall not have the right to cancel the agreement on the grounds of any damages suffered as a consequence thereof.
5. Neither customer nor user shall be responsible for the protection of any information that is (i) in the public domain, or (ii) is already in the possession of the other party and is not covered by the duty of confidentiality, or (iii) that was acquired by the other party from a third party without restrictions in respect of disclosure, or (iv) that was composed independently by the other party without reference to the confidential information.
6. If the disclosure by customer of results of research to third parties gives rise or may give rise to confusion – such to the discretion of user – this fact shall relieve user from his duty of confidentiality to such extent as he shall within reason deem necessary in order to offer comments on the results of such research to third parties.

Article 19 : Intellectual property and copy rights

1. Without prejudice to the other provisions of these general terms and conditions user retains the rights and powers that are vested in user by force of the Act on Copy Rights and other legislation in respect of intellectual property. Unless otherwise explicitly agreed, reports, drawings and other material assets which the assigned activities result in shall remain the property of user.
2. All documents provided by user, such as: budgets and planning schedules that are part of a quotation, reports, advisory notes, recommendations, agreements, designs, sketches, data, syllabi, publications, presentations, work books, study materials, conceptual descriptions, accounts, models and modules, 'routers', drawings, films, videotapes, software, (electronic) files, etc., are exclusively meant for the use of customer and may not be copied, published, or be made available to third parties without the prior written consent of user.
3. User retains the right to utilise the knowledge acquired in the fulfilment of the agreement for his own benefit and for other purposes, in as far as hereby no confidential information is made available to third parties.

Article 20 : Samples, models, indications and hints

1. If a sample or a model has been provided to or shown to customer, this shall be deemed to have been a mere indication, unless it is explicitly agreed that the product to be delivered shall be identical therewith.
2. In the event of an assignment in respect of an immovable asset, the mention of the surface or other measurements and indications shall equally be deemed to be a mere indication, without the product to be delivered necessarily being identical.
3. In the events in which user has given or suggested concrete and / or fictitious examples to customer of: possible improvements in respect of production results, possible specifically indicated and / or suggested (technical) improvements in respect of cultivation and / or production, possible and / or desired improvements in the structure of crop models, optimisations of installations relating to cultivation-technology (facilities), possible cost savings in whatever sense, even calculation models or other examples thereof, these shall only be meant as indications or even challenges. The service to be provided and the results of the provided services shall never have to resemble the previously provided examples and results.

Article 21 : Non-acquisition of personnel

Customer shall not for the duration of the agreement as well as for a period of two years thereafter employ or otherwise, directly or indirectly, engage employees and / or consultants / other involved parties of user or of businesses engaged by user in the fulfilment of the agreement and (having been) involved with the fulfilment of the agreement.

Article 22 : Disputes and applicable law

1. The court of the district in which user has its registered seat shall be exclusively competent in respect of any unhoped-for disputes, unless user prefers to follow the normal regulations of competence.
2. All agreements between user and customer shall be subject to Dutch law.