

## General Terms and Conditions 2110

governing the carrying out of tissue culture activities, of the Tissue Culture division of Plantum as filed with the Chamber of Commerce in Rotterdam, Gouda branch on 20 December 2012.

In case of any contradiction between the Dutch version and the translation, the Dutch version shall prevail.

### Article 1 Applicability and definitions

- These general terms and conditions apply to all offers, assignments and agreements, as well as the execution thereof, by members of the Tissue Culture Section made to or entered into with third parties.
- The term "contractor" is defined as:  
the tissue culture company that, based on an agreement to carry out work, has entered into the obligation vis-à-vis the counter party to provide specific tissue culture products or services at an agreed price.  
The term "client" is defined as: the natural or legal person who contracted the contractor to carry out the activities mentioned in the previous sentence.  
The term "mother plant material" is defined as: the original plant material that is supplied by the client in connection with carrying out the agreed activities. This can concern in vivo or in vitro material.
- Any terms and conditions of the client, of whatever nature and by any name whatsoever are not applicable, unless agreed explicitly in writing.
- Varying provisions must be agreed explicitly in writing and insofar as these provision do not replace the provisions of these general terms and conditions, these provision shall be deemed to supplement these terms and conditions.

### Art.2. Offers

- Offers are without obligation unless the offer contains a term for acceptance. If an offer is accepted by the client, the contractor has the right to revoke the offer in writing within five working days after having received the acceptance.

### Art.3. Agreements

- The formation of an agreement is realised at the time of the explicit acceptance of the assignment by the contractor in a manner that is in accordance with the general practice in the tissue culture sector and provided that this has not been revoked based on article 2.

### Art.4. Prices

- Prices are exclusive of VAT and additional expenses, including: transport charges, packaging costs, cost of quality control and/or phytosanitary inspection, import duties, government and other official levies, as well as fees under plant breeders' rights and any other fees, unless agreed otherwise in writing.
- Unless otherwise indicated, prices are in euros (€).
- The contractor is entitled to adjust the prices, in accordance with the requirements of reasonableness and fairness, to a level to be determined by the contractor if its expenses have increased significantly since the price was set.

### Art.5. Deliveries

- The contractor enters into the obligation to deliver the agreed quantities, with the exception of the provisions in article 11 of these general terms and conditions.
- Specified delivery times shall never be regarded as final deadlines, unless explicitly agreed otherwise in writing. In the event of non-timely delivery, the contractor must be given written notice of default, whereby the client must set a reasonable period for the contractor to fulfil its obligations as yet. The contractor shall warn the client timely in the event any departures from the specified delivery times are foreseen.
- The contractor may consider the assignment to be terminated after a period of nine months after the commencement of the carrying out of the activities, if in the contractor's opinion no or insufficient results have been obtained, unless explicitly determined otherwise. Upon the termination of the agreement due to an insufficient result, the client shall only have to pay the costs of the hours spent up till then to the contractor. In the event that the client has already made a down payment at the commencement of the agreement then this shall settled with the incurred costs.
- If the products that were ordered are not taken delivery of after the expiry of the agreed delivery period, the risk of the possible occurrence of a loss in quality caused by longer storage is for the client. The ordered products are at the client's disposal and are stored for the client's account and risk. If after the expiration of a limited storage period that may be considered reasonable in view of the type of product, the client has not taken receipt of the products and the risk of loss of quality and/or spoilage of the products leaves no other option, the order shall be deemed to have been cancelled by the client. The client is liable for damage that the contractor suffers as a result.
- When the client cancels an assignment completely or partially, the client is obliged to pay the agreed price to the contractor for the products that have been made already. For products that are still being processed, the client is obliged to pay the costs of the hours spent to the contractor.
- The contractor retains the right to not carry out orders if the client has not paid for previous deliveries within the agreed payment period. The contractor is not responsible for any damage at the client as a result of non-delivery. The contractor must inform the client timely if this right is invoked.

### Art.6. Place and time of delivery

- Deliveries take place from the factory of the contractor.
- Loading and shipment must take place in an efficient manner. If the client does not prescribe a means of transport, the contractor selects the most customary means of transport. Transportation costs are for the client's account unless agreed otherwise.

### Art.7. Payment

- Payment of that which the client owes the contractor should take place within a period of 14 days after the invoice date.
- The client is not entitled to reduce the purchase price by any counter-claim it may make. The client is not entitled to suspend the fulfilment of its payment obligation in the event of a complaint submitted by the client to the contractor regarding the products delivered, unless the contractor expressly agrees with the suspension in exchange for a guarantee.
- If the client does not fulfil its payment obligation in time, the client shall be deemed to be in default by operation of law. The contractor shall then be entitled to charge interest at 1% monthly as from the date that the client is in default of fulfilling the payment obligation indicated in paragraph 1, with part of a month being counted as a whole month.
- If payment has to be obtained by means of making use of the services of a third party, the resulting costs are for the client's account. This means that the client who is in default - notwithstanding the cost of any legal proceedings - is obliged to pay for the costs, arising due to its being in default, a sum immediately due and payable equal to 15% of the invoice amount or the actual collection costs.
- If after the conclusion of the agreement, the contractor hears of circumstances that give the contractor good reason to fear that the client will not fulfil its obligation to pay the price, then the contractor has the right to demand guarantee of payment, and as long as this has not been provided satisfactorily,
  - to suspend the delivery or
  - to give notice of termination of the agreement if the client does not provide security for payment within 14 days of being summoned,
 notwithstanding the contractor's right to recover the resulting damage from the client. The payment of that which has already been delivered or had been produced shall then become immediately due and payable.

### Art. 8 Retention of title

- All products delivered and to be delivered to the client and the products arising there from, irrespective in which stage of the cultivation process, remain the property of the contractor, until all claims that the contractor has or acquires vis-à-vis the client, including in any case the claims specified in Book 3, section 92, subsection 2, of the Dutch Civil Code have been paid in full.
- The client is not authorised, before payment in full has taken place to transfer the ownership of products delivered by the contractor or to be delivered by the contractor to a third party or to pledge these products except in accordance with its normal business operations or the normal designated use of the products. In the event of a violation of this, the purchase price of the products delivered by and to be delivered products shall become due and payable immediately.
- In the event of non-timely payment of one or more due invoices, the contractor has the right to appropriate the products immediately and to remove these products from the storage area.  
The client grants an irrevocable authorisation hereby in advance to the contractor to enter the premises where the delivered products are located or allow the premises to be entered by those persons who have been charged with taking back the products.
- The client bears the risk for the delivered products as from the time of delivery.
- Insofar as the contractor holds goods and/or products that should be deemed to be the client's property - including any mother plant material made available insofar as present and tissue culture products paid by the client - the contractor has the right to continue to hold the aforementioned goods and/or products until payment in full has been received of all that the client owes at any given time.

### Art.9. Packaging

- Non-reusable packaging is charged to the client at cost.
- The contractor has the right to charge the client an agreed user fee for reusable packaging and other durable material, which fee shall be specified separately on the invoice.
- If a returnable deposit is charged, this is settled after the the material in question is returned in the correct state. The costs of the return transport are charged to the client.

### Art.10. Complaints

- The client has the obligation to check or have checked the quantity of the delivered products when taking delivery of the products and to immediately inform the contractor of any observed shortage of delivery. The quantity or number of products, stated on the consignment note, delivery note or any certified document for that purpose, are acknowledged as correct, unless immediately after the observation by the client the shortage of delivery is recorded on the receipt in question.
- Complaints regarding visible defects of delivered products must be reported immediately after these defects have been observed or in any case within 72 hours after taking delivery with a confirmation of receipt or by telephone. A complaint reported by telephone must be confirmed by the client to the contractor in writing within eight days after taking delivery of the products. The above terms also apply with regard to submitting complaints regarding the invoicing; after the terms have expired, the client is deemed to have approved the invoice.
- Complaints regarding invisible defects of delivered products must be reported to the contractor immediately after they have been discovered and in any case in such a timely manner to be submitted to the above mentioned in writing that this party is able to examine the correctness of the complaint (or have this examined) on site or take back the delivered products.
- Complaints must at least include:
  - a detailed and accurate description of the defect;
  - a specification of facts on the basis of which it can be determined that the products delivered by the contractor and those rejected by the client are the same;
  - specification of the delivery number on the packing slip.
- Complaints regarding a portion of the products delivered cannot give rise to rejection of the entire delivery. A complaint received after the expiration of the above-mentioned terms will not be handled.

### Art.11. Force Majeure

1. In the event of force majeure, at the contractor's choice - after consultation with the client - the obligation to deliver can be completely or partially cancelled or suspended.
2. The term force majeure is defined as: every circumstance falling outside of the direct scope of influence of the contractor as a result of which the fulfilment of the agreement can no longer be reasonably demanded, such as for example strikes, fires, extreme weather conditions, government measures or diseases and plagues or defects in the materials delivered to the contractor.
3. When it is not possible for the contractor to deliver the ordered quantities in the event of force majeure, then the contractor has the right to reduce the to be delivered quantities. If this event should occur, the client has the right, after consultation with the contractor, to dissolve the agreement if the delivered quantity differs materially from the agreed quantity.
4. The contractor is not liable for the damage that the client suffers due to non-delivery, non-timely or non-complete delivery due to force majeure.
5. The contractor undertakes to inform the client in writing, to enter into consultations with the client and to then inform the client of its choice in writing in the cases referred to above in paragraph 1 and paragraph 3 of this article. If the contractor opts for suspension and the delivery is thus delayed for more than 21 days, the client is entitled to dissolve the agreement in writing; however, only after the client has given the contractor notice of default by a writ or registered letter, whereby the client must give the contractor a reasonable term to fulfil its obligations as yet.

#### **Art.12. Guarantee and liability**

1. The contractor guarantees that the products, which are to be delivered on the basis of the order, comply with the requirements set out in the applicable regulations of Dutch testing authorities in effect at the time this agreement was concluded.
2. The contractor does not guarantee the growth and flowering of the products that it delivers, as this depends on elements that are outside of the contractor's control.
3. The contractor is not liable for any defects in the event that, at the time of delivery of the products in question, taking into account the then existing scientific and technical knowledge regarding the propagation of the product type, the contractor could not have prevented the occurrence of these defects.
4. In the event of complaints with regard to the products delivered that the contractor has declared well-founded, the compensation for any damage suffered by the client shall not be higher than the invoice value per plant of the delivered products to which the complaint pertains, unless the client proves that the damage was caused by wilful misconduct or gross negligence on the part of the contractor. In no event whatsoever, shall the contractor be liable for any form of consequential damage, loss of turnover or loss of profit.
5. Both parties are obliged to ensure that any damage is limited in as far as possible.
6. Advice and information are always provided to the contractor's best knowledge and ability; however, without any liability on the part of the contractor.
7. Any possible claim regarding compensation for damages pursuant to these general terms and conditions expires, if and as soon as one year has passed since the delivery of the products in question when the claim has not been submitted to the contractor in writing.
8. The client is obliged to ensure that end users are informed in a thorough and adequate manner about the fact that the products that they are buying, either the seed or the resulting products, are not suitable for consumption. The client indemnifies the contractor in the event that the contractor is held liable by an end user for damage caused by the incorrect use of the seed, cutting and/or the products produced from this, which is due to providing faulty or inadequate information by the client to the end user.

#### **Art.13. Rights and obligations regarding the mother plant material supplied by the client**

1. The client states that the mother plant material supplied by the client is free of quarantine organisms. If such an organism is present in the mother plant material, the client is liable for all damage, including consequential damage, that the contractor suffers as a result.
2. The client is obliged to provide all useful information concerning the mother plant material supplied by the client that could be important in the contractor's opinion for carrying out the assignment. The contractor retains the right insofar as the client has made incorrect or incomplete statements, in particular with regard to the property rights regarding the mother plant material that it has delivered, to dissolve the existing agreements. The client is liable for any damage resulting from incorrect and/or incomplete information provided by him in this context.
3. The contractor is in no way whatsoever responsible for the partial or complete loss of mother plant material that has been supplied by the client.
4. The mother plant material that has been supplied by the client remains the client's property. The contractor is obliged to return the mother plant material supplied by the client, insofar as this is still intact, to the client free of charge. The contractor is not allowed to provide the mother plant material supplied by the client and the products propagated from this to third parties other than in connection with the outsourcing of activities as referred to in article 15.
5. The contractor shall not provide any information to third parties about the fact that the client has given material to the contractor to be processed, nor about this assignment or the material that is being processed, it will not allow others to have access to this material. The material that is being processed at the contractor and/or supplied to the contractor is designated with a lab code.
6. In the event of bankruptcy of the contractor, the client has the right, in view of the perishable nature of the products, to the immediate return of the mother plant material supplied to the contractor and the products propagated from this. This does not alter the fact that the client is obliged to pay for the work already carried out by the contractor.

#### **Art.14. Intellectual Property Rights**

1. Upon acceptance of the assignment, the client must state whether the mother plant material that it has delivered belongs to a variety to which a third party or third parties could possibly claim the exclusive rights, in particular plant breeders' right. If this is the case, then the client must provide a written statement from which it is apparent that it is acting with the consent of the entitled party/parties.
2. If the client does not provide the statement referred to in article 14 paragraph 1 within 7 days after the contractor has requested the client to provide this statement, and the contractor believes that it has well-founded reasons to suspect that the mother plant material belongs to a protected variety, then the contractor is explicitly and irrevocably authorised in advance by the client to inform the party entitled to this variety about this.
3. The contractor is entitled at all times to provide information about the quantity of material ordered by the client of a variety protected by a plant breeders' right to the holder of the plant breeders' right.
4. The client indemnifies the contractor against all possible claims with regard to infringement of intellectual property rights in connection with the assignment that the client has given to the contractor.

#### **Art.15. Outsourcing of activities**

1. The contractor has the right to outsource activities to third parties. If the client cannot agree with the outsourcing to third parties, the client must inform the contractor in writing at the time of giving the assignment.

#### **Art. 16. Applicable law and disputes procedure**

1. Dutch law applies to all agreements to which these general terms and conditions apply in whole or in part.
2. All disputes regarding or arising from the agreements concluded between the contractor and the client, to which these general terms and conditions apply, can be settled by the Dutch court that is competent in the area in which the contractor is established. In addition, the contractor is entitled at all times to summon the client to appear before the court which is competent by law or by virtue of the applicable international convention.

#### **Art.17. Final stipulation**

1. If and inasmuch as any part or provision of these general terms and conditions proves to be contrary to any compulsory provision of national or international law, it will be deemed not agreed on and these general terms and conditions will otherwise bind the parties. Parties will then enter into consultation to arrive at a new provision that is in accordance with the relevant laws, and that corresponds in as far as possible with the intention of the parties.

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