



## General Terms and Conditions

for tissue culture work carried out on contract by the Tissue Culture section of Plantum NL, as filed at the Chamber of Commerce and Industry in Rotterdam, Gouda office.

### 1 Scope

1. The present General Terms and Conditions apply to all offers, orders and agreements and the execution thereof made by members of the Tissue Culture section or entered into with third parties.

2. The user of these General Terms is: a tissue culture company engaging by virtue of a work agreement to another party to supply tissue certain culture products or services at an agreed price. The user is hereinafter referred to as the 'contractor' and the other party as the 'client'.

3. Provisions deviating from these General Terms and Conditions must be agreed on explicitly in writing and will be deemed to supplement the provisions of the General Terms and Conditions inasmuch as they do not replace them.

### 2 Offers

1. Offers are not binding unless they include a deadline for acceptance. If an offer contains a non-binding offer and it is accepted by the client, the contractor is entitled to revoke the offer within five business days after receipt of the acceptance.

### 3 Agreements

1. Agreements are concluded at the moment of explicit acceptance of the order by the contractor in the manner that is customary in the tissue culture trade..

### 4 Prices

1. Prices are exclusive of VAT, costs of packing, quality control and/or phyto-sanitary examination, import duties, government and other public levies, as well as plant breeder's fees and other fees and apply to delivery ex works.

2. Prices will be considered to have been quoted in Euro.

3. Agreed prices may not be increased without the client's consent.

### 5 Delivery

1. The contractor engages to deliver the agreed quantities, notwithstanding the provisions of section 6 (2) of the present General Terms and Conditions.

2. Delivery dates indicated are never to be considered absolute deadlines, unless explicitly agreed otherwise. In the event of late delivery, the contractor must therefore be given formal notice, whereby the client must set a reasonable period for the contractor to fulfil his obligations nonetheless. The contractor will warn the client in time if deviations from the delivery times indicated are expected.

3. The contractor may consider the order terminated after 8 months from the beginning of execution of the work, if no results, or insufficient results have been obtained by that point in his view, unless explicitly stated otherwise. On termination of the order because of insufficient results, the client will owe the contractor only the cost of hours worked to date. If the client has already made a payment at the start of the agreement under section 8.1, it will be charged against the cost incurred.

4. If delivery has not been taken of the products ordered after expiry of the agreed delivery, the risk of any loss of quality as a result of the additional storage period shall be for account of the client. The products ordered will be at his disposal and stored at his expense and risk. If, however, after a limited conservation period has elapsed that may be considered reasonable in view of the product type, the client has not taken delivery and the risk of loss of quality and/or deterioration of the products leaves no other choice, the order will be deemed to have been cancelled by the client. The client is liable for the resulting damage.

5. If the client cancels an order in whole or in part, he will owe the contractor the agreed sale price for products manufactured to date. For products still in progress, the client will owe the contractor the cost of hours worked to date.

6. The contractor reserves the right not to carry out orders if the client has not paid for previous deliveries within the agreed payment period. The contractor is not liable for any damage to the client as a result of non-delivery. The client must be informed in time of the enforcement of this right.

### 6 Force Majeure

1. At t 1. At the contractor's option, after consultation with the client, the obligation to deliver may be cancelled in whole or in part or suspended in the event of force majeure.

2. For 2. Force majeure is understood to mean: any circumstance beyond the contractor's direct control, as a result of which execution of the

agreement can no longer be reasonably required, such as, strikes, fire, extreme weather conditions or government measures, etc.

3. If the contractor cannot deliver the quantities ordered because of force majeure, he will be entitled to reduce the quantities to be delivered. If the case as indicated in the preceding sentence occurs, the client will have the right of annulment, after discussion, if there is a significant deviation from the agreed quantity.

4. The contractor is not liable for damage incurred by the client as a result of non-delivery, late delivery or incomplete delivery because of force majeure.

5. The contractor agrees to inform the client in writing of his choice in the events indicated in parts 1 and 3 of this section. If suspension is chosen and the delivery is thereby delayed by more than 21 days, the client is entitled to state in writing that he considers the agreement to have been annulled; this will not occur, however, until after he has given the contractor formal notice by means of a writ or registered letter, in which case the client must set a reasonable period for the contractor to fulfil his obligations after all.

### 7 Time and place of delivery

1. Delivery will occur ex seller's works.

2. Lading and shipment must be done efficiently. If the buyer does not prescribe a means of transportation, the seller will select the most usual form. If the buyer prescribes a means of transportation other than that proposed by the seller, transport will be at the buyer's risk.

3. The seller is liable for damage occurring until the moment of delivery of the products in the event of shipment by his own lorries.

### 8 Payment

1. Payment of amounts owed by the client to the contractor as charged by the contractor to the client must occur, in terms of the basic amount, on signing the order form in question, or within a period of 14 days thereafter. Payment of other amounts owed for execution of instructions given must be within 14 days after the date of the invoice in question sent to the client after delivery of the material in question.

2. The client is not entitled to deduct any amount from the purchase price to be paid for a counterclaim that he may make. The client may not suspend payment of the purchase price if the contractor can demonstrate that the complaint regarding the goods delivered, on which the client's claim for suspension is based, is unjustified.

3. If the client does not fulfil his payment obligation in time, he will be deemed to be legally in default. The contractor will then be entitled to charge interest of 1% monthly from the day that the client proves to be in default of the payment obligation indicated in part 1, with a portion of a month being counted as a full month.

4. If payment is to be made by bringing in third parties, the resulting costs will be at the client's expense. This means that the client in default, notwithstanding any costs of the proceedings, will owe an amount, due immediately, equal to 15% of the invoice amount or the actual collection charges, regarding the expenses caused by his being in default.

5. If, after concluding the agreement, the contractor becomes aware of circumstances giving him reason to fear that the client will not fulfil his obligation to pay the purchase price, the contractor will be entitled to demand surety for payment and, as long as it has not been provided to the contractor's satisfaction,

a. to suspend delivery or

b. to cancel the agreement by means of termination, if surety for payment has not been provided by the client within 14 days after a summons to do so, notwithstanding the right to claim the resulting damage occurring to him from the client. The price of all products delivered or created to date will then immediately become due.

### 9 Retention of title

1. All products delivered to the client will remain the property of the contractor for as long as they have not been paid for in full.

2. Before payment in full has been made for all products delivered or to be delivered by the contractor, the client is not entitled to transfer them to third parties in ownership or pledge other than in accordance with his normal business or the normal purpose of the products. In the event of ontravention hereof, the purchase price of all products delivered or to be delivered by the contractor will become due immediately.

3. In the event of late payment of one or more invoices due and if the specific circumstances of the case and a reasonable evaluation of the parties' interests leaves no other choice, the contractor will be entitled to take immediate possession of the products delivered and remove them from the place of storage, at which time the contractor will now irrevocably be authorised by the client for such event to enter the premises where the delivered products are situated or to cause them to be entered by persons entrusted with the retrieval of the products.

4. After the products have been made available to the client, until final payment has been made, the client will continue to bear the risk for all direct or indirect damage occurring to or by the products regardless of the cause.

5. Inasmuch as the contractor holds goods and/or products that should be considered as belonging to the client, including any parent material made available and tissue culture products paid for by the client, the contractor is entitled to retain the relevant goods and/or products until full payment has been received for all that the contractor is owed at any time.

#### **10 Packaging**

1. Single-use packaging will be charged at cost price.
2. The contractor is entitled to charge the client a user fee for re-useable packaging and other durable materials, to be indicated separately on the invoice
3. If a deposit is charged, it will be settled after the material in question has been returned in proper condition. The cost of return transportation will be charged to the client.

#### **11 Complaints**

1. The client is obliged to check the quantity of the batch delivered on receipt, or have it checked, and to inform the contractor immediately in writing of any shortcoming found. The quantity or number of items indicated on the waybill, delivery form or any document authenticated for that purpose is recognised as correct unless errors on the proof of receipt are marked immediately after being detected by the client.
2. Complaints concerning visible defects in products delivered must be reported to the contractor in writing by telex, fax, telegram, e-mail with confirmation of receipt or by telephone immediately after having been detected or at any rate within 72 hours of receipt of the products. A complaint reported by telephone must be confirmed by the client in writing within 8 days of receipt of the products.
3. Complaints concerning invisible defects in products delivered must be reported to the contractor immediately after they have been detected and must at any rate be submitted in writing in such good time that the contractor is able to examine the products on site or to have these examined to establish whether the complaints are justified or to arrange for the return of the products.
4. Complaints must at least contain:
  - a. a detailed and accurate description of the defect;
  - b. an account of the facts on the grounds of which it may be concluded that the products delivered and the products rejected by the client are identical.
  - c. an indication of the delivery number on the packing slip.
5. Complaints concerning part of the products supplied cannot be a cause for rejection of the entire delivery. Complaints submitted after the periods referred to above have elapsed will not be considered.

#### **12 Warranty and liability**

1. The contractor warrants that the products to be supplied on the basis of the order will meet the requirements stipulated in the applicable regulations of the Dutch inspection authorities, which are in force at the time the agreement is concluded.
2. The contractor does not warrant the growth and flowering of the products delivered by him, as this is dependent on factors which are beyond his control.
3. The contractor is not liable for any defects in products supplied if, in view of the current state of science and technology concerning propagation of the relevant product category by means of the tissue culture method, he could not have prevented such defects from occurring at the time of the delivery of the products concerned.
4. In the event that the contractor declares complaints regarding products delivered to be justified, compensation of any damage or loss suffered by the client will at no time exceed the invoice value of the products delivered to which the complaints relate, unless the client proves that the damage or loss was caused by wilful intent or gross negligence on the part of the contractor.
5. Recommendations and information are always provided to the contractor's best knowledge and ability, but without any liability on the part of the contractor.

#### **13 Protection of original species by breeder's rights or contracts**

1. The client makes the parent material available for reproduction by the contractor using in vitro culture technology.
2. In signing the order confirmation, the client states that the parent material that he makes available for processing or reproduction does not belong to a species for which one or more third parties may have claims to exclusive rights, particularly claims to breeder's rights.
3. If the client does not issue a statement as indicated in 13.2 within 7 days after the contractor has requested him to do so and the contractor believes he has reason to suspect that the parent material belongs to a protected species, then the contractor will then explicitly and irrevocably be authorised by the client to inform the party holding the rights to this species.
4. In the event that no material can be delivered by the contractor to the client because the material proves to belong to a protected species, the client will then be liable for any damages incurred by the contractor as a result and the contractor will then be entitled to terminate the agreement

extra-judicially with immediate effect.

5. The parent material to be processed will remain the property of the client. The contractor is obliged to return the parent material made available, inasmuch as it still exists, to the client without charging for expenses.
6. The contractor bears no responsibility for complete or partial loss of the parent material through no fault of his own.
7. The client is obliged to provide all relevant information on the parent material that he has made available that may be important in the contractor's view in executing the order. The contractor reserves the right to terminate existing order agreements inasmuch as the client has made incorrect or incomplete statements in the order, particularly regarding property rights for the material provided by him for processing. The client is liable for any damages resulting from incorrect and/or incomplete information provided by him in this respect.
8. The contractor will not provide information to a third party regarding the fact that the client has provided material to him for processing or regarding this order or the material received for processing itself; he will not provide access to this material to others. The material being processed by the contractor and/or to be delivered will be indicated by a code only.
9. The right of the contractor to contract the work assigned out to third parties is excluded from the obligations indicated in this provision. If the client cannot agree to contracting out to third parties, the client must indicate this in writing on giving the order.
10. Third party in these general terms and conditions refers to: (legal) persons who are not parties to this agreement, except:
  - 1) affiliated companies: (legal) persons that are part of a corporation, including parent companies, subsidiaries and associated companies.
  - 2) parent companies: companies that directly or indirectly hold more than 50% of the voting shares or have predominant authority over the party in question, and
  - 3) subsidiaries: companies that directly or indirectly hold more than 50% of the voting shares or over which the party in question has predominant authority and
  - 4) associated companies: a subsidiary that is part of the corporation and has the same parent company.

#### **14 Disputes**

1. Dutch law applies to all agreements to which these General Terms and Conditions apply in whole or in part.
2. Disputes regarding or arising from agreements concluded between the contractor and a client established abroad to which these General Terms and Conditions apply may be decided on only by a Dutch judge who has jurisdiction in the area where the contractor is established.

#### **15 Final provision**

1. If and inasmuch as any part or provision of these General Terms and Conditions may prove to contradict any obligatory provision of national or international law, it will be considered not to have been agreed on and these General Terms and Conditions will otherwise continue to bind the parties. The parties will then enter into consultation to arrive at a new provision in accordance with the relevant legislation and which complies with the intention of the parties as much as possible.
2. The Dutch language publication of these General Terms and Conditions is the authentic version and, in case of a dispute concerning the interpretation of the text, is binding and decisive.

November 2001