

**General Conditions for DLO**  
**04.19.1999**

## **Applicability**

### **I.I**

The following definitions are used in these General Conditions:

- DLO: The Agricultural Research Department, a foundation in accordance with Dutch law, based in Wageningen, as well as all business entities associated with it
- the Principal: the party which enters into an agreement with DLO
- the Order: the written Order for the execution by DLO of the Activities described in the Quotation
- the Activities: the execution of Research and/or the supply of products and services, all in the broadest sense of the word
- the Quotation: the offer free of engagement by DLO to the Principal of a certain price for which it will carry out Activities
- the Research Work Plan: the schedule incorporated in the Quotation of the Activities upon which the Principal and DLO have already reached agreement
- the Research: the Research to be carried out by DLO on the basis of the Research Work Plan
- Research Results: the results of the Research as disclosed to the Principle by DLO in the (final) report

### **I.II**

These General Conditions apply to all Quotations by, all Orders to and all agreements with DLO for the execution of Activities. These General Conditions apply to the explicit exclusion of the (general) conditions of the Principal whatever they may be called.

### **I.III**

These General Conditions have been established by DLO and have been registered with the Clerk of the District Court of Arnhem and with the Chamber of Commerce (no: 09098104).

## **1. Quotation, *field of the Order***

### **1.1**

The field of the Order is determined by the Research Work Plan, including all of the changes which are subsequently introduced, by mutual written agreement.

### **1.2**

All Quotations, estimates and such like are free of engagement unless they contain an expiry time for their acceptance.

### **1.3**

Changes, supplements to and or extension of the Quotation, Order or agreement or these General Conditions are only binding after said have been agreed upon in writing between the Principal and DLO.

### **1.4**

The Principal shall make use of the Quotation submitted by DLO including DLO's knowledge and/or ideas which it contains only for the purpose of evaluating its interest in issuing of the Order. This stipulation also applies to proposals for changes, additions and/or extensions to the Order.

### **1.5**

Unless it is expressly incorporated in the Quotation, the execution of investigations into the existence of related patent rights of third parties and/or into the possibilities for patenting will not be included in the Order.

## **2. *Reaching the agreement***

### **2.1**

The agreement is reached upon the written confirmation by DLO of the acceptance of the Quotation.

## **3. *The execution of the Order, result***

### **3.1**

The Order shall be executed within the (estimated) term, mentioned in the Order unless this proves impossible. If it is foreseeable that the term will be exceeded,

DLO will notify the Principal as soon as possible. In the event that a term is or will be exceeded, DLO shall in consultation with the Principal determine a term which will be met. DLO shall not be in default simply due to the expiry of any term.

In the event that it has been agreed that the Activities will be carried out in phases, DLO can postpone the commencement of activities for a following phase until the price of the preceding phase has been paid by the Principal.

### **3.2**

By accepting the Order, DLO undertakes no obligation other than to use its best endeavours to achieve a usable result for the Principal when executing the Order.

### **3.3**

In the event that (part of) the Order entails the delivery of a material good, DLO will give no further guarantee for the material good other than that described in the Quotation. Unless otherwise stated, DLO delivers ex works in accordance with the Incoterms of 1990.

### **3.4**

In the event that the Order (partly) concerns the testing of samples, only the Principal will bear responsibility for the selection, its representative nature, the marking of codes, the brand or product name and for making available to DLO the samples to be researched unless it is expressly agreed that sample-taking will take place under the responsibility of DLO.

### **3.5**

DLO shall have no obligation to commence with the Order before all materials or goods to be made available to DLO actually have been made available to DLO in the agreed form, number and/or quality. The term stipulated in Article 3.1 will be automatically prolonged by the period of any delay caused as a result of the above.

### **3.6**

DLO shall notify the Principal of any occurrences in the course of the Research

which are in the opinion of DLO of importance to the Principal.

## **4. Confidentiality**

### **4.1**

The Principal undertakes to treat in confidentiality all knowledge and ideas of DLO which are disclosed to him as a consequence of Article 1.4.

### **4.2**

In the event that this is agreed at the time of issuing the Order, DLO undertakes to treat with confidentiality the name of the Principal and the fact that the Research has been carried out, for a period not exceeding two years after the date of the final invoice.

### **4.3**

DLO undertakes to treat with confidentiality any Research Results except where it concerns calculation methods, programming and experimentation methods whose development is not the direct aim of the issue of the Order. In the case of inspections, analyses, measurements or literature surveys, the obligation to maintain confidentiality will not extend beyond the findings of the inspection, analysis, measurement or survey that has been carried out. Unless otherwise agreed at the time the Order is issued, the obligation to maintain confidentiality will continue to apply until the date of the final invoice for the Order or until the date of the final report in the event that this is delivered earlier.

### **4.4**

DLO will be subject to an obligation to observe with confidentiality any information disclosed by the Principal to DLO during the execution of the Order and expressly described by the Principal as being confidential.

This obligation to maintain confidentiality does not apply to:

- information which is already in the possession of DLO at the time that the details are disclosed to DLO;
- information which is or becomes public

knowledge, without this being due to any culpable actions or negligence on the part of DLO;

- information which is obtained by DLO by legitimate means from a third party, or from its own research, without any use being made in any way of the confidential information.

#### **4.5**

In the event that misunderstandings arise as a result of the disclosure by the Principal of Research Results, this will release DLO from the obligation to maintain confidentiality to the extent that is necessary in order for DLO to clarify the Research Results to third parties.

#### **4.6**

DLO's obligation to observe confidentiality shall not apply as far as this conflicts with the legal duties and obligations of DLO, nor when and to the extent that DLO establishes a serious danger to persons or goods. In the latter case DLO will, if possible, consult the Principal before notifying those whose person or goods are threatened and/or the competent authorities of the dangerous situation.

#### **4.7**

The authorisation of the Principal is required for the involvement of third parties in the execution of the Order, in the event that and to the extent this represents a foreseeable risk to the confidentiality as a consequence.

#### **4.8**

If it is agreed in writing, DLO shall refrain from accepting orders from third parties in the same field as the Order during the execution of the Order.

### **5. *The rights to the results***

#### **5.1**

Within the field of the Order, the Principal has the normal right of use of the Research Results. The right of the Principal is exclusive during the period in which DLO is obliged to observe confidentiality in accordance with Article 4.3, without prejudice to the stipulations of Articles 5.2 and 5.4.

#### **5.2**

During the period in which DLO is obliged to maintain confidentiality in accordance with Article 4.3, DLO has the right to use the Research Results as meant in Article 5.1 exclusively for its own purposes.

#### **5.3**

After the period has elapsed in which DLO is obliged to maintain confidentiality in accordance with Article 4.3, DLO also has the right to use the Research Results as meant in Article 5.1 on behalf of third parties and to allow them to be used by third parties.

#### **5.4**

DLO has the right to use for itself and/or to allow to be used for and/or by third parties:

- a. the knowledge and experience in DLO's possession at the time that the Order is accepted;
- b. the knowledge and experience obtained by executing the Order, which are outside the field of the Order;
- c. calculation methods, programming and experimental methods arising from the Order's execution to the extent that their development was not directly intended with the issue of the Order.

#### **5.5**

Reports, drawings and other material matters in which the commissioned Activities result will revert to or become the property of the Principal, without prejudice to the stipulation of Article 8.7, subject to DLO's copyright.

### **6. *Disclosure***

Without the prior written authorisation of DLO, the Principal is not permitted:

- a. to publish or disclose in any other way a report issued by DLO. To disclose shall be understood to include submitting the report to third parties for inspection;
- b. to allow a report issued by DLO to be used either in part or in its entirety for the purpose of filing a claim, for the carrying out of legal procedures, for promotion or anti-promotion and for the purpose of

- acquisition in the more general sense;
- c. to use the name of DLO in whatever context in the publication of a part or parts of a report issued by DLO and/or for one or more of the purposes named in clause b;

## **7. The protection of knowledge**

### **7.1**

To the extent that the execution by DLO of the Order leads to Research results which are suitable for patenting or plant breeder's rights, DLO is entitled to apply for the patent or plant breeder's rights in its name and at its expense. In doing so, DLO will observe its obligation to maintain confidentiality arising from Article 4.

### **7.2**

In the event that DLO does not make use of its right as stipulated in Article 7.1 within six months as stipulated in Article 7.3, this right may be transferred to the Principal on conditions to be agreed.

### **7.3**

DLO and the Principal shall keep each other informed about:

- a. their assumptions that anything potentially patentable may have been discovered or anything that may be protected by breeder's rights;
- b. the fact that an application for a patent or breeder's rights has been filed;
- c. the contents of such an application.

Furthermore, DLO and Principal shall provide each other with full cooperation when filing such an application.

### **7.4**

If DLO exercises her rights pursuant to either Article 7.1 and 7.2, then DLO shall, if the Principal so requests within six months of the date of the application, grant a non-transferable license, on conditions to be agreed upon, on the grounds of which Principal can derive rights in accordance with the stipulation of Article 5. The granting of a license will be subject to the other stipulations

of the Order with similar application.

### **7.5**

The applicant/holder of the patent/breeder's rights may at all times withdraw an application or terminate granted patent/breeder's rights. If a license has been granted to either the Principal or DLO, they shall have the first opportunity to transfer the application or patent/breeder's rights to their name.

## **8. Price and payment**

### **8.1**

If a 'fixed price' is incorporated in the Quotation, this price will apply as the agreed price. If there is no 'fixed price' incorporated in the Quotation, then it is agreed between the Principal and DLO that the sum to be paid will be determined by subsequent calculation at the DLO rates. In the event that a 'price estimate' is incorporated in the Quotation, then the amount quoted will serve only as an estimate of the costs which is not binding.

Furthermore, in this last case DLO is entitled, if a period of one year or longer elapses between the date of the Quotation and the date upon which the Activities (shall) end, to index the part of the price of the Order which has not yet been invoiced every 1st January in accordance with the annual adjustments of the rates applying at DLO.

### **8.2**

In the event that no 'fixed price' is incorporated in the Quotation and the Order has an expected duration of at least three months, DLO can, if the Principal so requests, keep to a maximum amount. This automatically releases DLO from the obligation to continue the Activities if this would mean exceeding this maximum amount.

### **8.3**

In the event that no 'fixed price' is incorporated in the Quotation and the Order involves an amount exceeding EURO 22,500,00. DLO shall, in the event that the Principal so requests at the time of issuing

the Order, specify said invoice in terms of man hours and man hour rates, direct material costs and, as far as this is applicable, the use of tools and the rates for the use of tools as well as compensation for the prescience employed.

#### **8.4**

The Principal is obliged to pay the invoices in Dutch legal tender within a period of thirty days after the date of the invoice. In the event that the Principal fails to observe the payment due date, DLO is entitled to charge, in addition to the amount due, an interest rate of 3% above the legal rate and all costs of the recovery of the monies due.

#### **8.5**

Unless otherwise stated, all amounts stated by DLO in the Quotation are exclusive of Value Added Tax.

#### **8.6**

DLO reserves the right to issue interim invoices. DLO can request advance payment at all times.

#### **8.7**

DLO will retain possession of all goods which DLO makes available to the Principal in the context of the Order, including the material goods as meant in Article 5.5, up until the time that the amount(s) related to the Order owed by the Principal to DLO are paid in full.

### **9. Liability**

#### **9.1**

DLO shall be liable only for damages which are the direct result of a culpable shortcoming on the part of DLO in the execution of its obligations. Should DLO be liable, by virtue of the contractual liability meant in the previous sentence and/or on any other ground, DLO shall only be liable for direct damages incurred by the Principal up to a maximum of 50% of the amount of the price that is owed by the Principal by virtue of Article 8.1.

#### **9.2**

DLO and/or the people used or contracted in for the execution of the Order shall not be

liable for damages suffered by the Principal in the course of the application or use of the Research Results, except where this involves intent or gross negligence on the part of DLO and/or the people used or contracted in for the execution of the Order.

#### **9.3**

The Principal shall indemnify DLO and/or people used and/or contracted in for the execution of the Order, against any and all claims by third parties on the grounds of damages suffered by these third parties arising from the application or the use of the Research Results by the Principal or by another party to whom the Principal has made the Research Results available, unless this involves intent or gross negligence on the part of DLO and/or people used and/or contracted in for the execution of the Order.

#### **9.4**

The Principal shall indemnify DLO and/or the people used and/or contracted in for the execution of the Order against any and all claims from third parties by virtue of damage and/or loss suffered by these third parties arising from the application or use of the information which the Principal makes available to DLO in the framework of the implementation of the Order.

#### **9.5**

DLO and/or the people used and/or contracted in for the execution of the Order shall not be liable for damage to or for the loss of objects which are put at the disposal of DLO by the Principal or given to be processed/put into operation.

#### **9.6**

The Principal shall be liable for damages and/or losses suffered by DLO and/or the people used and/or contracted in for the execution of the Order during the time spent in connection with the Order on the premises of the Principal and/or third parties, unless the damages are caused by the gross negligence or wilfulness of DLO and/or the people contracted in for the execution of the Order. This clause shall override otherwise stated clauses which have been agreed upon

with the people used and/or contracted in for the execution of the Order for entry onto the premises.

#### **9.7**

DLO shall not accept any liability for damages that occur as the result of the fact:

- that the Research Results are not fit for any use or any commercial application and/or
- that the Research Results are not suitable for patenting or plant breeder's rights and/or
- that the rights of third parties are infringed through the application of the Research Results.

#### **9.8**

DLO shall not accept liability for damages which result from defects in the goods supplied to DLO which are subsequently supplied by DLO to the Principal, unless and to the extent that DLO can transfer the liability to its supplier.

### **10. Storage**

#### **10.1**

Unless agreed otherwise at the time that the Order is issued, DLO shall, if reasonably possible, store the goods including samples or their remains which have been made available to DLO in the context of the Order, for two weeks after the date upon which the Principal 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 Principal has not made an arrangement for the return of said goods by the end of said two week period, DLO will be at liberty 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 Principal.

### **11. Miscellaneous**

#### **11.1**

In the case of activities in the context of the Order on the premises of the Principal, the Principal shall make available to DLO at no charge assistance and tools in the event that DLO so requests in good time.

#### **11.2**

During their stay in DLO's buildings and/or premises, the Principal and/or his staff are obliged to observe the "house rules" which apply to the users of said buildings or premises. The Principal will ensure that his staff behave in accordance with the stipulation above.

#### **11.3**

In the event that either the Principal or DLO do not meet any essential obligations contained in the agreement, the other party will give the defaulting party written notice and give the defaulting party a reasonable period in which to meet its obligations nevertheless. In the event that the defaulting party still fails to meet its obligations within said period of time, its rights arising from the agreement will lapse and the other party will no longer be bound to meet any of its own obligations.

#### **11.4**

Claims by the Principal in respect of DLO which arise from or are related to the execution of an Order by DLO and/or people used or called in by DLO for the execution of the Order will lapse completely in the event that such claims are not expressly made known within one year after the date of the final invoice, unless the Principal demonstrates it to be impossible to satisfy this requirement within the period of time stated.

#### **11.5**

In the event that DLO is in possession of any goods of the Principal in order to carry out research on them and/or with them, DLO is entitled to retain the goods until all amounts due to be paid by the Principal in relation to the Order have been settled, unless the Principal has provided sufficient security for these amounts.

#### **11.6**

In the event that one or more stipulations of these General Conditions appear to be null and void or should be declared to be null and void, the remainder of the agreement and the

conditions which apply to it will remain in effect. In the event that the above-mentioned case should arise, the null and void stipulation(s) will be replaced by (a) stipulation(s) which approach(es) it as far as possible in terms of content, purport and the consequence, without being rendered null and void.

## **14.2**

This agreement is governed by Dutch law.

## **12. Force Majeure**

### **12.1**

Non-culpable shortcomings on the part of DLO in the execution of her obligations (force majeure) that will not give the Principal any right to dissolve the agreement or to claim compensation for damages include but are not limited to: war; mobilisation; unrest; floods; closed shipping; other traffic stoppages; stagnation; hold-ups or restrictions in supplies of public utility companies; shortage of coal, gas, petroleum products or other means of energy generation; fire, machine failure or other accidents; strikes, lock-outs, trade union actions; shipping restrictions, other measures taken by the government; failure by third parties to deliver necessary materials and semi-manufactured goods; intent or gross negligence of associates; other similar circumstances.

### **12.2**

In the event of bankruptcy or a (temporary) request for suspension of payment of Principal the price of the Order shall become claimable at once and with immediate effect.

## **13. Transfer**

### **13.1**

The Principal is not entitled to transfer to a third party his rights and obligations arising from this agreement without the prior written authorisation by DLO which authorisation will not be unreasonably withheld.

## **14. Disputes**

### **14.1**

All disputes which may arise from this agreement, or from further agreements which may proceed from it, will be arbitrated by the competent court in Arnhem.