

# GENERAL TERMS AND CONDITIONS FOR COMMISSIONS TO TNO



**Disclaimer:** The translation of these General Terms and Conditions into the English language was prepared with the utmost care. However, TNO does not accept any liability for the correctness and completeness of the compilation and content of the translation and the direct or indirect consequences of acting or failing to act on it. In all cases where the English version might divert from the original Dutch version, the Dutch version shall be decisive.

## 1. DEFINITIONS

In these General Terms and Conditions, the following terms have the following specific meaning:

**Background:**

all IP Rights, as well as knowledge (including know how), experience and other information to which a party is entitled and which was not developed or created in the context of the Agreement. These include objects mutually made available by the parties in the context of the Commission, including but not limited to auxiliary- and/or test materials, samples, prototypes, information carriers and/or computer software;

**General Terms and Conditions:**

these terms and conditions for commissions to TNO;

**Final Report:**

the outcome(s) of the Commission as reported in final form by TNO to the Customer;

**Export Laws and Regulations:**

the applicable rules and regulations in relation to export and import, including but not limited to export and import of military goods and dual-use goods (jointly referred to as 'strategic goods') and chemical substances;

**IP Rights:**

all intellectual and industrial property rights, including but not limited to copy-, database-, trade names-, plant breeders-, model-, trademark- and patents rights and rights regarding topographies of semiconductors and domain names;

**Quotation:**

an offer by TNO, in whatever form, for the (intended) execution of (research) activities, including any adaptations before the Quotation is accepted in accordance with Clause 3.1;

**Commission:**

the research activities to be carried out by TNO as specified in the Agreement;

**Customer:**

the party that commissions the (research) commission to TNO. For Clause 4.4, Clause 13.2 and Clause 13.4 of the General Terms and Conditions, these include third parties engaged by the Customer;

**Agreement:**

the agreement between the Customer and TNO to carry out the research (activities) as meant in Clause 3.1;

**TNO:**

the legal entity organized under Dutch public law by Act of 19 December 1985 concerning the Dutch Organization for applied natural scientific research TNO, having its registered office in Delft, the Netherlands, with its main offices in the Hague, the Netherlands and registered with the Hague Chamber of Commerce under number 27376655. For Clause 12.2 and Clause 13.1 (second sentence), Clause 13.2 (with the exception of sub a), Clause 13.3 and Clause 13.4 of the General Terms and Conditions, these include third parties engaged by TNO;

**Foreground:**

all IP Rights, as well as knowledge (including know how), experience and other information developed or created in the context of the Agreement. These include objects, including but not limited to auxiliary- and/or test materials, samples, prototypes, information carriers and/or computer software;

## 2. APPLICABILITY

**2.1** – These General Terms and Conditions are applicable to all Quotations and Agreements. Dutch law is applicable to all Quotations and Agreements and these General Terms and Conditions.

**2.2** – General purchase- or other conditions of the Customer are not applicable to the legal relationship between the Customer and TNO and are hereby declined.

**2.3** – TNO has adopted these General Terms and Conditions and filed these with the Court Registry of the District Court of the Hague, the Netherlands and with the Chamber of Commerce in the Hague, the Netherlands. The General Terms and Conditions are

also available on the website [www.tno.nl](http://www.tno.nl). At the request of the Customer, a physical copy can be sent free of charge.

### 3. QUOTATION AND AGREEMENT

**3.1** – A Quotation is valid during one month, unless TNO expressly states a different term in the Quotation. On acceptance of the Quotation, an Agreement is concluded. If the Customer requests to perform (any part of) the Quotation, the Customer thereby accepts the Quotation.

**3.2** – The intended area of application of the Commission is specified in the Agreement. Once the Agreement (including all annexes) is concluded, this contains all agreements that TNO has made with the Customer concerning the Commission. Modifications, amendments or deviations to the Agreement are only binding when entered into in writing.

**3.3** – The Customer may use the Quotation (including any modifications, amendments or deviations thereto) only to determine whether it will award TNO the Commission. If no Agreement is entered into, TNO remains sole right holder in regard to the content of the Quotation, with the exception of any information from the Customer that it contains.

### 4. THE COMMISSION

**4.1** – TNO will perform the Commission within the agreed (estimated) term. If this term is likely to be exceeded, Parties will consult each other in order to determine a new term. TNO is only in default after the Customer has summoned TNO to perform one or more of its obligations under the Agreement within a reasonable term and that term has expired without TNO having performed these obligations.

**4.2** – TNO undertakes solely to use reasonable care and skill in carrying out the Commission. TNO will draft a Final Report and deliver this to the Customer.

**4.3** – In the case TNO delivers a good to the Customer, TNO will not give a warranty thereon. When a good is delivered, TNO will deliver 'Ex Works' place of applicable TNO branch. 'Ex Works' needs to be interpreted in accordance with the International Commercial Terms 2010 (Incoterms 2010).

**4.4** – The Customer will not use any outcome of the Commission in a manner that will be in violation of Export Laws and Regulations. The Customer will indemnify TNO for claims of third parties resulting from non-compliance by the Customer of Export Laws and Regulations. TNO may suspend its obligations and suspend the rights of the Customer until a permit required under Export Laws and Regulations has been granted. TNO may terminate the Agreement without being bound by any obligation to the Customer, if such permit is not granted or is not expected to be granted within a reasonable term.

**4.5** – The Customer must deliver to TNO an end-user statement at first request thereto regarding the end-user of the outcome of the Commission.

**4.6** – In the performance of the Commission, TNO may engage third parties.

**4.7** – TNO is not obligated to commence performance of the Commission before TNO has received all materials required for the performance of the Commission that will have to be made available by the Customer. If TNO receives these materials later than agreed, the (estimated) term for the performance will be extended by at least the duration of this delay.

**4.8** – If the Customer has not collected the materials made available to TNO (or the remainder thereof) within two weeks after the Final Report has been delivered, TNO will be free to take appropriate measures, including the destruction thereof, at the expense of the Customer.

**4.9** – When the Customer makes materials available to TNO which are considered dangerous, the Customer must clearly designate and mark these materials in the customary manner and manner prescribed by law and, if necessary, provide them with instructions for storage and use.

### 5. CONFIDENTIALITY

**5.1** – For two years after the delivery of the Final Report, TNO will keep the content of the Final Report confidential, with the exception of:

- a. TNO Background;
- b. foreground developed by TNO, development of which was not an intended outcome of the Commission;
- c. methods and techniques used and/or developed by TNO for any outcome of the Commission;
- d. use of the findings of TNO in a form that cannot be traced back to the Customer or the Commission.

**5.2** – TNO will keep confidential the information provided by the Customer indicated as confidential and of which TNO obtains knowledge, except for:

- a. information already in possession of TNO before it was provided to TNO for the performance of the Commission;
- b. information in the public domain, or information which is made public, without a breach of confidentiality obligations owed by TNO to the Customer;
- c. information that TNO validly obtained from a third party or through its own research without having used the confidential information of the Customer.

TNO is no longer obligated to observe confidentiality if:

- a. this is necessary to correct misunderstandings which result from the Customer having made public any outcome of the Commission;
- b. if TNO discovers a serious danger to persons or goods;
- c. if TNO pursuant to a decision issued by a court of law or supervisory body under public law is required to disclose information. If reasonably possible, TNO will consult with the Customer before providing any information in such a case.

### 6. BACKGROUND

**6.1** – All rights that the Customer owns or obtains with regard to Background of the Customer, will remain vested with the Customer. All rights that TNO owns or obtains with regard to Background of TNO, will remain vested with TNO. TNO may at any time use its Background itself, have it used by third parties or use on behalf of third parties.

**6.2** – TNO is entitled to use the Background of the Customer as far as necessary for the performance of the Commission.

**6.3** – Commercial use of Background owned by TNO (also when it is part of any outcome of the Commission) is subject to prior and express written consent by TNO. Such consent may be subject to further conditions.

## 7. FOREGROUND

**7.1** – If the Customer has created (parts of Foreground) in the context of the Commission, the relevant IP Rights will vest in the Customer. The written documentation relating to the Commission, is determinative for the scope of the IP Rights of the Customer (or the exclusive right to vest these). Foreground that is created by or on behalf of TNO (regardless whether this is an intended or non-intended outcome of the Commission or methods and techniques used and/or developed by TNO for any outcome of the Commission) will vest in TNO.

**7.2** – Copyrights on a preliminary, intermediate and Final Report, will always fully vest in TNO.

## 8. PROTECTION OF FOREGROUND

**8.1** – The party that has the right to protect (part of) the Foreground by means of one or more IP Rights, will inform the other party about its exercise of that right and the specific contents thereof. TNO and the Customer will provide each other with all co-operation reasonably required to vest one or more IP Rights.

**8.2** – If the Customer has the right to protect (part of) the Foreground and refrains from doing so, the Customer will inform TNO and will give TNO the opportunity to protect the (or that part of the) Foreground or to continue such protection, in which respect it is noted that all other reciprocal rights arising from the Agreement (including rights of use) will be maintained.

**8.3** – In the event the Customer discovers an infringement on Foreground of TNO and/or Background of TNO, the Customer must notify TNO as quickly as possible.

## 9. USE OF FOREGROUND

**9.1** – The Customer acquires the right to use that part of the Foreground vested in TNO within the area of application of the Commission, subject to the limitations laid down in Clause 9. For two years from the date of delivery of the Final Report, this right of use is exclusive, except with regard to any incorporated Background of TNO.

**9.2** – TNO is entitled at all times to use Foreground developed by TNO, the development of which was not intended as an outcome of the Commission, or methods and techniques used and/or developed by TNO for any outcome(s) of the Commission itself, have it used by third parties or use on behalf of third parties.

**9.3** – TNO is entitled at all times to use the Foreground (as background knowledge for other research) and after the term of exclusivity meant in Clause 9.1 has expired by third parties or on behalf of third parties.

**9.4** – TNO will not investigate the existence of third party IP Rights to the Foreground.

## 10. USE OF A FINAL REPORT

**10.1** – A Final Report, as well as a (possible) preliminary or intermediate report or any later subsequent explanatory notes to the Final Report, is intended solely for the Customer's own use. Any other use requires TNO's prior written consent, including for:

- reproduction or disclosure by means of print, photocopy, in electronic form or in any other way, or storage in a searchable information file;
- making available to anyone other than parties with an immediate interest, including use by or on behalf of third parties;
- use or allowing the use, in whole or in part, with the intent to lodge claims or to conduct legal proceedings;
- use or allowing the use, in whole or in part, for advertising or anti-advertising purposes or for soliciting sales or services in a more general sense.

Such prior consent of TNO may be subject to further conditions. In all cases, anyone to whom a Final Report is made available on the basis of Clause 10, must be able to assess the full Final Report.

## 11. DETERMINATION OF PRICE AND PAYMENT

**11.1** – A 'guide price' listed in the Quotation or agreed to in the Agreement is a non-binding indication of the price for the Commission, excluding the expenses incurred by TNO (in consultation with the Customer). The final price for the Commission (also in the case there is no 'guide price') will be determined and invoiced on the basis of a subsequent calculation. TNO is entitled to index that part of the price for the Commission not yet invoiced, in accordance with the annual adjustment of the rates used by TNO.

**11.2** – If in the Agreement a 'fixed price' is agreed, this will be the price for the Commission, excluding the expenses incurred by TNO (in consultation with the Customer). If the Commission is changed or expanded – in agreement with the Customer – or in case TNO had to perform additional work because the Customer did not upon entering into the Agreement inform TNO partly or fully about its wishes, demands or preconditions, TNO will determine and invoice the Customer for the additional costs incurred on the basis of a subsequent calculation and the Customer is obligated to pay these additional costs.

**11.3** – TNO may at any time require the Customer to make an advance or interim payment.

**11.4** – All amounts quoted in the Quotation and/or the Agreement are exclusive of VAT, unless stated otherwise.

**11.5** – The Customer is required to pay a TNO-invoice within thirty (30) days of the invoice date. Setting off the invoice against amounts owed by TNO to the Customer is not allowed. If the Customer fails to pay the invoice in time, the Customer also will owe TNO the statutory interest applicable to commercial transactions, as well as all reasonable costs incurred by TNO to obtain payment of its invoice. TNO retains ownership of any goods delivered or to be delivered to the Customer, until the relevant TNO-invoice (and possible statutory interest and cost incurred to obtain payment) has been paid in full. The Customer will not

acquire IP Rights to (any part of) the outcome of the Commission until the price meant in Clause 11 is paid in full.

## 12. NON-PERFORMANCE

**12.1** – If a non-performing party of a material obligation under the Agreement after a demand to perform this obligation within a reasonable term, still has not performed after this term has expired, than the other party, subject to the conditions of Clause 14.1, no longer is obligated to perform its (remaining) obligations under the Agreement and may terminate the Agreement.

**12.2** – The Customer needs to file any claims against TNO by means of a written and express notice to TNO as soon as possible, but in any case before the first anniversary of the date of delivery of the Final Report. Claims lodged after that date, will automatically lapse.

## 13. LIABILITY

**13.1** – TNO is only liable for damages which are the direct result of a failure attributable to TNO to perform its obligations under the Agreement. The total aggregate liability under any and all legal grounds, is (cumulatively) limited to the amount of the price that the Customer has to pay under Clause 11.

**13.2** – TNO is further not liable for any damages or loss of the Customer:

- a. arising as a result of the application or use of any outcome of the Commission, other than in the event of willful intent or gross negligence of TNO;
- b. arising as a result of the fact that any outcome of the Commission cannot be protected by means of one or more IP Rights or because application or use of any outcome of the Commission infringes third party rights;
- c. resulting from defects in goods supplied to TNO, including software, that are supplied by TNO to the Customer, unless and in so far as TNO can recover such damages or loss from Supplier.

**13.3** – The Customer will fully indemnify TNO against any claims of third parties for damages or loss which result from application or use of any outcome of the Commission by the Customer or by any third party to whom the Customer has made such outcome of the Commission available, unless such outcome was the result of willful intent or gross negligence of TNO.

**13.4** – TNO will not be bound to any restrictions of the Customer (resulting from the Agreement or otherwise) that serve to limit the liability of the Customer wholly or partly.

## 14. TERM AND TERMINATION

**14.1** – The Agreement will continue for an indefinite period and terminates upon delivery of the Final Report and full payment of the price as meant in Clause 11. The Agreement will terminate by law and without obligation of TNO to pay damages, if:

- a. the Customer is declared bankrupt;
- b. the Customer is granted (temporary) suspension of payment;
- c. the Customer's business is liquidated or wound up, or;
- d. prejudgment or executory attachment is levied on substantial part of the Customer's tangible and/or intangible assets or other goods.

In case the Agreement is terminated by means of this Clause 14.1 or by means of Clause 12.1 and the Final Report is not delivered, the date of termination of the Agreement is deemed the date of delivery of the Final Report.

**14.2** – In case the Agreement is terminated prematurely, the Customer is not entitled to use any preliminary or interim outcome of the Commission, neither by itself nor by third parties or on behalf of third parties. If TNO and the Customer nevertheless expressly agree in writing that the Customer will acquire IP Rights in any preliminary or interim outcome of the Commission, the acquisition of these IP Rights is subject to payment by the Customer of that part of the price as meant in Clause 11, to be reasonably determined by TNO.

**14.3** – When the Agreement terminates, the provisions of the Agreement that are intended to continue to apply in full after the end of the Agreement, will continue to apply in full, such as the provisions in respect of liability, right of use, confidentiality, choice of law and choice of forum.

**14.4** – If any provision of the General Terms and Conditions is deemed void or not valid, that will not affect the validity of the entire General Terms and Conditions.

**14.5** – In the case of a dispute between TNO and the Customer concerning the Quotation or the Agreement (or related agreements) that cannot be resolved amicably between the parties, this will be exclusively settled by the competent court in the Hague, the Netherlands.