



## **General terms and conditions for research projects at Concrefy B.V.**

In these General Terms and Conditions for research projects at Concrefy B.V., Concrefy B.V. is understood to mean the legal person "CONCREFY", headquartered in Venlo.

Unless otherwise agreed in writing, in which there is an express departure from the current general terms and conditions (these 'General Terms and Conditions'), work and projects conducted by CONCREFY (hereafter the 'Contractor') will only be accepted and executed under the terms and conditions that follow. These General Terms and Conditions will be considered to be known and accepted by the persons or entities who/that give instructions to the Contractor (hereafter the 'Principal'), waiving the Principal's own general terms and conditions, and will be considered to govern the entirety of the business relationship between the parties, not only for the agreement occasioning the sharing of these General Terms and Conditions, but also for all subsequent new quotes, projects and agreements; if the parties expressly and in writing depart from these General Terms and Conditions for one or more specific agreements or for a part thereof, the General Terms and Conditions remain in force between the parties concerning the other clauses and the previous or later quotes, projects and agreements.

### **1. Creation of agreement**

1.1 The content of an agreement between parties will be determined by these General Terms and Conditions and further by what is expressly agreed in writing (hereafter: 'agreement'). Oral agreements thus bind the Contractor only after these are confirmed in writing by the Contractor. If a quote is neither confirmed in writing by the Principal nor disputed and the Contractor, without protest from the Principal, has commenced the fulfilment of the agreement, then the content of the quote will apply as the agreement.

### **2. Scope of the project, quote**

2.1 The scope of the project will be determined by the description of the work in the quote, including all changes that are subsequently made in consultation.

2.2 The agreement with respect to the completion of the project is created when the quote produced by the Contractor is confirmed by the Principal and Contractor.

2.3 In a quote, it will be indicated how the results of the work done will be conveyed: written recommendation, report, model, etc.

2.4 Unless otherwise stated in the quote, the Contractor will honour the quote for two months after the date of the quote.

2.5 Changes, supplements and/or extensions of the project, or departures from the General Terms and Conditions are only binding after these are agreed upon in writing between the parties.

2.6 The Principal uses the quote produced by the Contractor and the information and ideas of the Contractor contained therein exclusively for evaluation of the Principal's interests in the awarding of the project. This provision is also applicable to proposals for change, supplement and/or extension of the project.

2.7 Unless expressly stated in the quote, the conducting of research into the patent rights of third parties or into the possibility of obtaining a patent is not part of the project.

### **3. Completion of the project, results**

3.1 The project will be completed within the (estimated) term reported in the quote in consultation with the Principal, unless this appears to be impossible. If there is a threatened violation of the term, the Contractor has the duty to consult with the Principal as soon as possible. The Contractor is not in default solely through expiration of the term without notice of default.

3.2 With the acceptance of the project, the Contractor is bound to nothing more than to strive in the execution of the work taken on for a result that is usable to the Principal.

3.3 If the project (in part) entails the delivery of a material item, it applies that no other guarantee concerning this material item is given by the Contractor than is described in the quote.

3.4 If the project (in part) concerns the examination of samples, it applies – except in the case where it is agreed that the taking of samples will be the responsibility of the Contractor – that the Principal exclusively bears responsibility for the selection, representativeness, designation of codes, brand or product names and for making samples to be examined available to the Contractor.

3.5 The Contractor is not obligated to commence the project before all the materials and items to be provided by the Principal to the Contractor have actually been made available to the Contractor in the agreed upon form and numbers. The term intended in Article 3.1 will be automatically extended by any resulting delay.

3.6 The Contractor will inform the Principal regarding clearly apparent shortcomings in the agreed-upon research method and other apparent issues with the research, which in the judgement of the Contractor are of interest to the Principal.

The Principal must provide the Contractor in writing and in a timely manner – at least 48 hours – preceding an agreed-upon time for the execution of an agreement or a part thereof (not counting Saturday, Sunday and official holidays) with complete and clear information and instructions, and the Principal warrants that all information necessary for the fulfilment of the agreement will be provided to the Contractor in a complete and timely manner. As the provider of information, solely the Principal warrants the accuracy and completeness of all instructions and

holds the Contractor harmless of all liability on the grounds of inaccuracy. The Principal will inform the Contractor in advance of all known, realistic or possible hazards in connection with an order or the samples or the testing, including, for example, the risk of exposure to radiation, toxic, damaging or explosive elements or materials, environmental contamination or poisoning.

- 3.8 The Principal must therefore ensure that the Contractor has all forms of authorisation necessary for entering the place of execution of the agreement, with the exception of those authorisation documents over which the Contractor is expected to possess for routine work, and must take all necessary steps in order to prevent or rectify obstacles or interruptions in connection with the execution of the agreement.
- 3.9 The Principal will take all measures and provide the employees of the Contractor with all necessary facilities so that they can reasonably, responsibly and safely carry out their work in an environmentally conscious way. The Principal must, if required, make special equipment and personnel available as necessary for the execution of the agreement.
- 3.10 Only the Principal is responsible for the use of all technical tools that are not the property of the Contractor.
- 3.11 The Principal will ensure the storage of the materials belonging to the Contractor and will do so in an appropriate, adequate and locked place or – if these materials are stored in a facility of the Contractor on the grounds of the Principal – provide security for the storage.
- 3.12 The Principal guarantees a prompt payment of the amounts invoiced by the Contractor.
- 3.13 The Contractor is not a party to any agreements of the Principal with third parties – such as a purchase agreement for items to which an intervention will be carried out by the Contractor under the agreement with the Principal. The Principal binds itself to exercise all its rights and to meet all its responsibilities under such contracts. The Principal recognises that with the execution of the agreement, the Contractor takes neither the place of the Principal nor the place of any third parties under such a contract, nor relieves them of any of their obligations, nor changes, assumes, suspends, withdraws or nullifies any obligation of the Principal with respect to the intended third party or other third parties.

#### **4. Confidentiality**

- 4.1 In the event that such is agreed upon the awarding of the project, the Contractor is obligated to strict confidentiality regarding the name of the Principal and the fact that the research has been carried out for a period that in principle ends two years after the date of the final invoice for the project or two years after the date of the final report if this is delivered prior to that date.
- 4.2 The Contractor is obligated to confidentiality regarding the results of the project, as provided by the Contractor to the Principal, except insofar as this concerns calculation methods, programming and experimental methods whose development was not a direct aim of the awarding of the project. For inspections, analyses, measurements or literature reviews, the duty of confidentiality extends no further than to the results of the conducted inspection, analysis, measurement or review. Unless otherwise agreed upon the award of the project, the duty of confidentiality for the Contractor lasts for two years after the date of the final invoice for the project or until two years after the date of the final report if this is delivered earlier.
- 4.3 For information of the Principal of which the Contractor becomes aware in the course of completing the project and which is expressly known to the Contractor as being of a confidential nature, a duty of confidentiality applies for the Contractor.
- 4.4 This duty of confidentiality is not applicable:
- for information that the Contractor already possesses at the time that the information is shared with the Contractor.
  - for information that is generally known or will be, without this being a result of any actions or negligence attributable to the Contractor;
  - for information which is legally obtained by the Contractor from a third party, or from the Contractor's own research, without any use being made in any way of the confidential information.
- 4.5 If, as a result of the publication of the results of the research by the Principal, misunderstandings arise, this relieves the Contractor of the duty of confidentiality to the degree that the Contractor reasonably needs to provide explanation of the results to third parties.
- 4.6 The duty of confidentiality of the Contractor does not apply when and insofar as the Contractor notes serious danger for persons or goods. In that case, the Contractor, if possible in consultation with the Principal, will report the hazardous situation to those whose person or good(s) are threatened and/or to the proper authorities.
- 4.7 For the engagement of third parties in the completion of the project, permission of the Principal is required, if and insofar as a foreseeable risk concerning confidentiality arises.

Only if this is agreed upon at the start of the project is the Contractor obligated during the execution of the project to refrain from accepting projects from third parties in the area of the project.

#### **5. Rights to results.**

- 5.1 Within the domain of the project, the Principal has complete and free right of use of the results of the project, as provided by the Contractor to the Principal. This right of the Principal is exclusive during the period in which the Contractor in compliance with Article 4.2 has a duty of confidentiality, except as determined in Articles 5.2 and 5.4.

- 5.2 During the period in which the Contractor in accordance with Article 4.2 has a duty of confidentiality, the Contractor has the right to use the results of the project exclusively for itself.
- 5.3 After the end of the period in which the Contractor in accordance with Article 4.2 has a duty of confidentiality, the Contractor also has the right with respect to the results as intended in Article 5.1 to use them for the benefit of third parties or to allow them to be used by third parties.
- 5.4 The Contractor has the right to use and/or to allow to be used for and/or by third parties:
- the knowledge and experience the Contractor had at the commencement of the project;
  - outside the domain of the project, the knowledge and experience, gathered in completing the project;
  - calculation methods, programming and experimental methods proceeding from the completion of the project, insofar as the development thereof is not directly intended with the awarding of the project.
- 5.5 Reports, drawings and other material items in which the work done in accordance with Article 2.3 results, rest with or are the property of the Principal, with the exception of author's rights of the Contractor.
- 5.6 The Contractor has the right to use or to let third parties use for the benefit of the Contractor the methods, knowledge and know-how developed through the fulfilment of an agreement.

## **6. Publication**

- 6.1 Without prior written permission from the Contractor, the Principal is not permitted:
- to publish the whole of a report produced by the Contractor or in another manner to make this public. 'To make public' is understood to mean, inter alia, giving insight to others than those parties with direct interests;
  - to wholly or partially make use of a report produced by the Contractor for the benefit of the establishing claims, for the pursuit of legal action, for advertising or counter-advertising and for the benefit of recruitment in the more general sense;
  - to use the name of the Contractor, in any context whatsoever, in the publication of a part or parts of a report produced by the Contractor and/or for one or more of the purposes named in sub-point b.
- 6.2 With the exception of express departures in these General Terms and Conditions, neither of the two parties may, without prior written consent of the other party, transfer its rights and obligations under the agreement to third parties, whereby the sister and daughter companies of the Contractor will not be considered as third parties.

## **7. Knowledge Protection**

- 7.1 Insofar as the completion by the Contractor of the project leads to patentable materials, the Contractor has the right to apply for a patent in its own name and at its own expense. The Contractor will hereby consider its duty of confidentiality proceeding from Article 4.
- 7.2 The Contractor and Principal will inform each other regarding:
- their suspicion that patentable material has been found;
  - the fact that a patent request will be submitted;
  - the contents of this application.
- Furthermore, they will provide each other in the submission of patent applications with all required cooperation.
- 7.3 If the Contractor does not wish to make use of its right as intended in Article 7.1, this right rests with the Principal if and insofar as the patent application (partly) concerns the results as intended in Article 5.1.
- 7.4 If the Contractor or Principal make use of its rights under Article 7.1 or 7.3, then the applicant/holder of the patent will be considered not to have granted a licence to the opposing party on the grounds of which parties can derive rights that arise on the grounds of the provision in Article 5. The other provisions for the project shall apply by analogy to the grant of a licence.
- 7.5 The applicant/holder is always free to withdraw a patent application, or to allow an awarded patent to expire. If the Principal or the Contractor is granted a licence, that party will be given the first opportunity to apply for or to have the patent transferred to its name.

## **Price and payment**

- 8.1 If a 'fixed price' is included in the quote, then this price applies as an agreed upon price. If there is no 'fixed price' included in the quote, then it is established between the Principal and the Contractor that the amount to be paid will be determined by calculation in arrears on the grounds of the agreed-upon rates for the project. If there are no rates agreed upon in advance, then the rates will be determined on the grounds of the methods used by the Contractor. If a 'target price' is included in the quote, then the reported amount indicates nothing more than a no-obligation estimate of the costs. Furthermore, the Contractor is entitled in the latter case, when there is a period of one year or more between the date of the quote and the date on which the work ends, to index the not-yet invoiced part of the price of the project per 1 January in accordance with the annual adjustment to the applicable rates of the Contractor.
- 8.2 For projects of € 15,000.- or more with an expected period of three months or longer, the Contractor can, if the Principal requests it, adhere to a limit amount. This automatically relieves the Contractor of the obligation to continue work insofar as more must be spent on the completion of the project than corresponds with this limit amount.
- 8.3 In the event that no 'fixed price' is included in the quote and the project involves an amount of more than € 25,000.-, the Contractor specifies, if the Principal so requests upon the awarding of the project, the calculation in man-hours and man-hour rates, direct materials costs and, insofar as applicable, use of amenities and rates as well as compensation for prior knowledge used.

- 8.4 Unless otherwise stated, all amounts mentioned in the quote by the Contractor are exclusive of VAT, duties, local taxes, permits, fees, levies or surcharges if applicable.  
The above mentioned costs will be accounted to the customer and, if applicable, these costs will be invoiced in addition.  
Furthermore, all costs due to exchange rates, shipment, insurance, customs or other costs and expenses associated with the shipment of goods or execution of consultancy services will be borne by the customer.
- 8.5 The Contractor retains the right to send interim invoices. The Contractor can always request payment in advance.
- 8.6 The Contractor is obligated to pay invoices in Dutch currency without relying on reductions or offsets within thirty days after the invoice date and to payment of both the legal interest and the costs of collection if the Principal exceeds this payment period of thirty days.
- 8.7 The Contractor retains title to all items that the Contractor makes available in the context of the Principal, including the material items as intended in Article 5.5, until the time at which the amount(s) owed by the Principal to the Contractor is (are) fulfilled.

## **9. Liability**

- 9.1 The Contractor is only liable for damage that is the direct result of a shortcoming directly attributable to the Contractor in the execution of its obligations. If the Contractor is under the contractual liability intended in the previous sentence and/or under other liability, then it applies that the Contractor is exclusively liable for direct damages of the Principal in the amount of the price that the Principal owes according to Article 8.1,
- 9.2 For damages that the Principal suffers from the application or use of the results of the work of the Contractor, the Contractor and/or persons used and/or engaged by the Contractor for the completion of the project is/are not liable, unless there is deliberate or gross error on the side of the Contractor and/or on the side of persons used and/or engaged by the Contractor for the completion of the project.
- 9.3 The Contractor indemnifies the Contractor and/or persons used and/or engaged by the Contractor for the completion of the project for all claims by third parties for damage suffered by these third parties proceeding from the application of or the use of the results of the work of the Contractor by the Principal or by another to whom the Principal has made that result available, unless there is deliberate or gross error on the side of the Contractor and/or on the side of persons used and/or engaged by the Contractor for the completion of the project.
- 9.4 In the event that persons used and/or engaged by the Contractor for the completion of the project are on the premises of the Principal and/or on those of third parties, the Contractor and or persons engaged by the Contractor for the completion of the project is/are not bound to stipulations in access permits etc., including whole or partial limitation of the liability of the Principal proceeding from the agreement.
- 9.5 The Contractor accepts no liability for damage that arises as a result of the fact that the results of the work are not eligible for obtaining a patent or because with the application of the results leads to a violation of the rights of third parties.
- 9.6 The Contractor accepts no liability for damages that result from flaws in items delivered to the Contractor that are forwarded to the Principal, unless and insofar as the Contractor can recover those damages from its supplier.

For agreements domestically and/or abroad, the Contractor, whether or not at the request of the Principal, can assign performance to another party. The Principal authorises the Contractor to provide the subcontract with all information – including that which otherwise falls under a duty of confidentiality elsewhere in these General Terms and Conditions – that is necessary for the completion of the intended performance. The Principal will not give information or instructions to the subcontractor with permission from the Contractor, and will not give additional projects to the subcontractor. The Contractor is not liable for the negative consequences of information, instructions or assignments given to the subcontractor by the Principal. If a subcontractor or third party is established at the same level as the Contractor upon the proposal, request or instruction of the Principal, then the Contractor is not liable for shortcomings of that subcontractor or third party and the costs that come from securing adequate performance or compensation for damages are at the expense of the Principal.

- 9.8 The Principal binds itself to indemnify the Contractor for all possible judgements from third parties for loss, damages or expenditures of whatever nature resulting from an act or commission of the Principal, even when no fault or default can be attributed to the Principal.
- 9.9 If and insofar as the Principal has insured any risks bound to an agreement, the Principal is obligated to settle any claims under that insurance and to indemnify the Contractor from claims of recourse from the insurer.
- 9.10 The right of the Principal to compensation for damages does not reduce the Principal's obligation for payment under the agreement. Settlement of sums owed to the Principal with sums owed to the Contractor is not permitted.

## **10. Preservation and research objects**

- 10.1 Unless otherwise agreed upon the awarding of the project, or if agreements are made through the certifying institution with the Contractor about the term of preservation of examined samples, the Contractor disposes of the goods, including samples that are made available to the Contractor in connection with the project or the remnants thereof as waste. Any costs associated with this will be considered to be included in the price reported in the quote.

- 10.2 At the express, written request of the Principal, samples can be preserved for a period to be agreed. If the Principal has not made an arrangement within this period for the return of the intended goods, the Contractor is free to take appropriate measures. Any costs that are connected to this, including costs associated with longer preservation will be at the burden of the Principal.
- 11. Various**
- 11.1 For work in connection with the project on the property of the Principal, the Principal will make, if the Contractor so requests in a timely manner, assisting personnel and vehicles available at no cost to the Contractor.
- 11.2 The Principal and/or his personnel are required to adhere in the residence and/or property of the Contractor to the 'house rules' that apply for the users of the buildings and property in question. The Principal will ensure that its personnel behave in accordance with this provision.
- 11.3 If either the Principal or the Contractor does not fulfil any essential obligation under the agreement, the other party sends the party in default a written message in this regard and sets a reasonable term during which the party in default has the opportunity to meet its obligation. In the event that the party in default still does not meet its obligation within the set term, its rights under the agreement expire, and the other party is no longer required to fulfil any of its remaining obligations.
- 11.4 Claims of the Principal with respect to the Contractor that proceed from or are connected with the completion of a project by the Contractor and/or by persons used and/or engaged by the Contractor for the completion of the project expire completely if such claims are not expressly made known within one year after the date of the final invoice, unless the Principal demonstrates that it was impossible to fulfil the duty of notice within the established term.
- 11.5 If the Contractor has any item of the Principal for examination, the Contractor is entitled to retain that item until all amounts owed in connection with the project by the Principal are fully met, unless the Principal has established sufficient security for those amounts.
- 11.6 Reproduction of logos belonging to the Contractor by anyone other than the Contractor itself is not permitted without prior written permission from the Contractor.
- 12. Disputes**
- 12.1 All disputes that may arise regarding the agreement, or regarding further agreements that may follow, will be decided by the duly authorised court in Roermond.
- 12.2 Dutch law is applicable to the agreement.