

# GENERAL TERMS AND CONDITIONS FOR COMMISSIONS TO TNO

**TNO** innovation  
for life

› SEPTEMBER 2010

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TNO aims to avoid any misunderstanding regarding the contents of the General Terms and Conditions and to provide easy access to those contents. For that reason TNO has filed its General Terms and Conditions both with the Court Registry of the District Court of The Hague and with the Chamber of Commerce in The Hague. In addition, the General Terms and Conditions are available on TNO's website: [www.tno.nl](http://www.tno.nl). The General Terms and Conditions came into effect on 1 September 2010.

Disclaimer: The translation of these General Terms and Conditions into the English language was prepared with the utmost care by a certified translator. 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 latter shall be decisive.

## 1. TNO DEFINITIONS.

Certain terms used by TNO in these General Terms and Conditions have a specific meaning. This Article defines those specific meanings.

### **Client, you, your:**

you, as the party commissioning TNO to perform research;

### **Commission:**

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

### **Final Report:**

the report drawn up by TNO which TNO makes available to you on the basis of 4.2, describing TNO's findings regarding the performance and the outcome of TNO's work and which TNO has assigned the status of Final Report;

### **General Terms and Conditions:**

these terms and conditions for commissions to TNO;

### **INCO Terms:**

the International Commercial Terms 2000, drawn up and published by the International Chamber of Commerce (ICC);

### **IP Rights:**

all intellectual and industrial property rights including, but not limited to, copyrights, trade name rights, plant breeders' rights, design rights, trademark rights and patent rights, and rights regarding topographies of semiconductors and domain names;

### **Quotation:**

a document drawn up by TNO that forms a specified offer for the proposed Agreement;

### **Scope of the Commission:**

the proposed area of application of the outcome of the Commission as specified in the Agreement;

### **TNO:**

the legal entity incorporated under public law 'Netherlands Organisation for Applied Scientific Research (TNO)', having its registered office in Delft, the Netherlands, and registered with the Chamber of Commerce in The Hague under no. 27376655;

### **Background:**

all knowledge, experience and other information to which a party is entitled and which was not developed or created in the context of the Agreement, as well as any IP Rights acquired as a result of or vested in such knowledge, experience and other information. Such knowledge, experience and other information also includes tangible objects mutually made available by the parties in the context of the Commission including, but not limited to, liquids, reagents and prototypes; production processes and other processes, working methods, know-how and/or computer software;

### **Foreground:**

all knowledge, experience and other information developed or created in the context of the Agreement, as well as any IP Rights acquired as a result of or vested in such knowledge, experience and other information. Such knowledge, experience and other information also includes tangible objects such as, but not limited to, liquids, reagents and prototypes; production processes and other processes, working methods, know-how and/or computer software.

The number references (**number.number**) refer to the relevant section of the General Terms and Conditions. The article headings have only been included to make it easier to read the General Terms and Conditions. This means that an Article may not be interpreted on the basis of the article headings or the structure of a provision of an Article. Where the Agreement refers to a statutory provision, this also includes any statutory provision that replaces it.

## 2. GENERAL MATTERS TO BE TAKEN INTO ACCOUNT.

### **2.1 – Applicable law.**

The Agreement is governed exclusively by the substantive laws of The Netherlands.

## **2.2 – Exclusion of other terms and conditions.**

The Agreement is subject only to the General Terms and Conditions.

## **2.3 – Valid changes, additions and/or expansions.**

TNO can only be bound by changes or additions to, an expansion of and/or deviation from the Quotation, the Agreement or the Commission or a deviation from the General Terms and Conditions if they are confirmed on behalf of TNO in writing or by e-mail followed by written confirmation by a person who is officially authorised to represent TNO. Such changes, additions, expansions and/or deviations are only valid in respect of the specific Agreement in which they have been agreed with you.

## **3. SCOPE OF THE COMMISSION. CONCLUSION OF THE AGREEMENT.**

### **3.1 – What is the Scope of the Commission?**

Prior to concluding an Agreement, TNO will send you a Quotation. The Quotation is only binding on TNO if it is confirmed on behalf of TNO by a person who is officially authorised to represent TNO. The Quotation describes the proposed Commission and the Scope of the Commission and, if the price is estimated at more than EUR 20,000, it specifies – upon request - the price in man hours, man hour rates, direct material costs and, if applicable, costs of equipment use and equipment rates. The Quotation is valid for one month after it has been issued by TNO, unless explicitly stated otherwise by TNO in the Quotation.

### **3.2 How is the Agreement concluded?**

The Agreement is concluded when your written consent, or consent by e-mail, to the Quotation has been received in good time. If you ask TNO to start work before it has issued a Quotation or before it has received your consent to the Quotation, your request will be regarded as consent to the entire Quotation as issued by TNO and an Agreement will have been created. Once the Agreement including all annexes has been created as described above, it contains all arrangements made by TNO and you regarding this Commission; any arrangements and commitments not contained in the Agreement are cancelled as a result.

### **3.3 – Unpermitted use of the Quotation.**

In the Quotation, TNO incorporates its ideas, knowledge and experience regarding the proposed Commission and the manner in which it can be performed. For that reason, TNO requires that you only use the Quotation (including any changes, additions and expansions) for determining whether you will award TNO the Commission and not for any other purposes. If no Agreement is created, TNO only holds rights with regard to the contents of the Quotation, with the exception of any information from you that it contains.

### **3.4 – May TNO accept third-party commissions within the Scope of the Commission?**

TNO may accept commissions from third parties within the

Scope of the Commission during the performance of the Commission, unless TNO and you have explicitly agreed otherwise in writing.

## **4. PERFORMANCE OF THE COMMISSION. OUTCOME OF THE COMMISSION.**

### **4.1 – When may you expect an outcome of the Commission?**

TNO will perform the Commission within the agreed estimated term. If this term is likely to be exceeded, TNO will contact you immediately to discuss this. However, TNO will not be in default until you have requested TNO in writing to perform its obligations within a reasonable period and that period has lapsed without those obligations having been performed.

### **4.2 – What outcome of the Commission may you expect?**

The nature of research activities implies uncertainty regarding the outcome of the Commission. That is why TNO solely undertakes to aim for a practicable outcome of the Commission when performing the Commission, which outcome TNO will record in a Final Report that will be provided to you, unless you and TNO agree otherwise. In addition, if TNO and you have agreed that TNO will provide you with a product, TNO will not issue any warranty, unless TNO and you have explicitly agreed otherwise in writing.

### **4.3 – Under what condition does TNO deliver?**

TNO delivers ex works 'location of the relevant TNO branch'. 'Ex works' must be interpreted in accordance with the INCO Terms.

### **4.4 – What do TNO and you agree regarding export laws and regulations?**

By accepting the Quotation or by entering into the Agreement, you undertake vis-à-vis TNO that you - including any persons or agents engaged by you in the performance - will refrain from making any use of the outcome of the Commission that would be in violation of export laws or regulations. 'Export laws and regulations' must be interpreted as all current laws and regulations in force at the time for the regulation of exports and imports of military goods and dual-use goods (jointly also referred to as 'strategic goods') and chemical substances. You will indemnify TNO for any liability towards any third party resulting from any non-compliance by you - including any persons or agents engaged by you in the performance - with export laws or regulations as a result of your use of the outcome of the Commission. If, in the context of the Agreement, an export or import permit must be issued by a government and/or any government body pursuant to export laws or regulations, or delivery is restricted or prohibited in any other way due to export laws or regulations, TNO may proceed to suspend its obligations and to suspend the Client's rights with regard to the delivery in question, until the required permit has been issued, or for the duration of the relevant restriction and/or prohibition. At such time, TNO may terminate the Agreement without

being bound by any obligation vis-à-vis the Client. The inability to obtain an export or import permit will not be considered force majeure (non-attributable failure).

#### **4.5 – What if an end-user statement is required?**

If an end-user statement is required in respect of the end user of the outcome of the Commission, TNO will notify the Client immediately. The Client must provide TNO with this document upon TNO's first request.

#### **4.6 – Is TNO allowed to engage agents?**

In the performance of the Commission, TNO may engage agents, provided that this does not create any reasonably anticipated confidentiality risk.

### **5. COOPERATION THAT TNO EXPECTS FROM YOU.**

#### **5.1 – Goods to be made available by you in respect of the Commission.**

If TNO and you have agreed that you will make certain goods available to TNO for the performance of the Commission, TNO is not obliged to commence performance before TNO has received the agreed number of goods, in the agreed form, within the agreed term. If TNO receives these goods later than agreed, the estimated term for performance stated in the Agreement will be extended by the duration of this delay. If TNO and you have agreed that the goods required for performance of the Commission are samples, you will be responsible yourself for their selection, representativeness and distinguishing marks (such as codes, brand or product names), unless you and TNO have agreed that TNO, or a third party on behalf of TNO, will take samples.

#### **5.2 – When should you collect the goods made available to TNO?**

TNO will retain the goods that you made available to TNO in connection with the research (or, if reasonably possible, the remainder) free of charge for two weeks after the Final Report has been delivered, unless agreed otherwise. After those two weeks, TNO will be free to take suitable measures; any related costs (for example costs of transport, storage, destruction, waste disposal, etc.) will be for your account.

#### **5.3 – What if changed insights or misunderstandings are discovered during performance of the Commission?**

If unmistakable shortcomings in the research methods or other significant details related to the research are discovered during performance of the Commission, TNO will inform you accordingly. If there are any misunderstandings regarding the contents and/or the performance of the Agreement because TNO did not receive information from you, or because that information was inaccurate or incomplete, not received in good time or in writing, this will be your risk, unless that would not be reasonable under the circumstances.

#### **5.4 – What does TNO expect from you if the goods are dangerous?**

If the goods that you make available to TNO for the performance of the research are potentially dangerous, in any way whatsoever, you must clearly designate these goods in the customary manner and/or, if applicable, in the manner prescribed by law and, if necessary, provide them with instructions for storage and use, to ensure that TNO must handle them with care.

### **6. TNO CONFIDENTIALITY REGARDING THE COMMISSION.**

#### **6.1 – What will TNO keep confidential regarding the Commission and for how long?**

TNO will keep the outcome of the Commission as laid down in the Final Report confidential for two years after the date of the final invoice or the date of delivery of the Final Report, whichever comes first, with the exception of:

- a. TNO Background, as well as;
- b. calculation methods, software or experimental working methods developed by TNO, the development of which was not directly intended with the award of the Commission;
- c. use of TNO's findings in a form that cannot be traced back to the Client or the Client's Commission, if the Commission comprises sampling, analysis, measurement or literature research.

TNO will only observe confidentiality throughout the period stated in this Article with regard to the Client's name and the fact that the Client's Commission has been performed if this was agreed when the Commission was awarded.

#### **6.2 – What Client information will TNO keep confidential?**

The information provided by you that comes to TNO's knowledge during the performance of the Commission and which you have indicated to be confidential will be kept confidential by TNO, with the exception of:

- a. information already in TNO's possession before it was provided to TNO during the performance of the Commission;
- b. information that is commonly known, or information that could become generally known for reasons that cannot be attributed to TNO;
- c. information that TNO validly obtained from a third party or through its own research without having used your confidential information.

Regarding the period between the issue of the Quotation to commencement of Commission performance, TNO and the Client may only lay down confidentiality in a written confidentiality agreement. Such consent may be subject to further conditions.

#### **6.3 – When is TNO no longer obliged to observe confidentiality?**

TNO is not obliged to observe confidentiality if and in so far as disclosure is required to explain matters to third parties in the event of misunderstandings resulting from your

disclosure of the outcome of the Commission. Likewise, TNO is no longer obliged to observe confidentiality if TNO discovers a serious danger to persons or goods. However, in that case TNO will consult with the Client, if possible, before informing the persons that are in danger and/or the competent authorities of the dangerous situation. Furthermore, TNO will no longer be obliged to observe confidentiality if TNO is required to provide information pursuant to a decision issued by a court of law or supervisory body incorporated under public law. If possible, TNO will consult with the Client before providing any information in such a situation.

#### **6.4 – What if you want information to be classified?**

At your request, TNO can classify the outcome of the Commission or parts of it that TNO is obliged to keep confidential (meaning it will assign it the degree of confidentiality desired by the Client, for example in accordance with the Civil Service Information Security (Classified Information) Decree (**VIRBI**<sup>1</sup>)). Additional conditions may be imposed before your request can be granted.

### **7. RIGHTS TO BACKGROUND<sup>2</sup>**

#### **7.1 – To whom accrue what rights with regard to Background?**

All rights you own or obtain with regard to your Background will remain vested in you. All rights TNO owns or obtains with regard to its Background will remain vested in TNO.

### **8. RIGHTS TO FOREGROUND.<sup>3</sup>**

#### **8.1 – To whom accrue what rights with regard to Foreground?**

If you have created any Foreground, or parts of it, within the context of the Commission with TNO, the relevant IP Rights or the exclusive right to vest these will, of course, accrue to you. The written documentation pertaining to the Commission is decisive for the scope of your IP Rights (or the exclusive right to vest them). Foreground created by or on behalf of TNO accrues to TNO, unless provided otherwise in the General Terms and Conditions or explicitly agreed with you in writing in any other way. In the latter case, the specific terms and conditions under which said rights will be transferred to you will also be laid down in this provision.

#### **8.2 – To whom do the rights accrue with regard to calculation methods, software and experimental working methods developed by TNO?**

The IP Rights, or the exclusive right to vest them, with regard to calculation methods, software and experimental working methods developed by TNO, the development of which was not directly intended with the award of the

Commission, accrue in full to TNO, unless provided otherwise by contract (which will also lay down the specific terms and conditions under which the right will be transferred to you).

#### **8.3 – To whom do the copyrights regarding a Final Report accrue?**

In deviation of or, if applicable, in addition to the provisions of Article 8.1, the copyrights with regard to a Final Report, as well as with regard to any preliminary or interim reports or subsequent explanatory notes to the Final Report, always accrue in full to TNO.

### **9. PROTECTION OF FOREGROUND.**

#### **9.1 – What if expectations are that the Foreground can be protected?**

If you or TNO expects that the Foreground, or parts of it, can be protected by performing an additional action, for example patenting, you and TNO will inform each other. The party entitled to protecting that part of the Foreground will inform the other party about its exercise of that right and the specific contents. In the event of protection of the Foreground, or parts of it, TNO and you will provide each other with all cooperation reasonably required to vest the right by performing an additional action, for example patenting. Any further cooperation may be subject to further conditions. TNO will not investigate the possibility of protecting Foreground with an IP Right, unless explicitly stated in the Agreement.

#### **9.2 – What if the party entitled to protect the Foreground, or parts of it, decides not to obtain further protection?**

If the party entitled to protecting the Foreground, or parts of it, by performing an additional action (for example patenting) refrains from doing so, it will inform the other party and give the other party an opportunity to protect the Foreground or that part of the Foreground or to continue the protection, in which respect it is noted that all other reciprocal rights from the Agreement, including rights of use, will be maintained. The parts of the Foreground to which you or TNO have an exclusive right in accordance with 8 are excluded from this provision.

#### **9.3 – Does protection of the Foreground, or parts of it, affect your or TNO's rights of use?**

If the Foreground or parts of it are protected, the rights of use granted under the Agreement and the General Terms and Conditions or under a separate agreement will be maintained.

#### **9.4 – What if an infringement, or alleged infringement, of IP Rights with regard to TNO Foreground is discovered?**

In the event the Client discovers an infringement of IP Rights with regard to TNO Foreground, the Client must notify TNO as quickly as possible, and TNO and the Client will discuss the matter.

<sup>1</sup> The information security-management rules in use by the Dutch Government.

<sup>2</sup> The word 'rights' in Articles 7 and 8 is understood to mean: regarding goods the rights of ownership, and regarding proprietary rights (such as IP Rights) the fullest right possible. This, as opposed to the rights of use discussed in Articles 10, 11 and 12.

<sup>3</sup> See footnote 2.

## **10. USE OF BACKGROUND.**

### **10.1 – Is TNO entitled to use your Background?**

TNO does not acquire the right to use your Background, other than and only in so far as necessary to perform the Commission.

### **10.2 – May you use the TNO Background that is part of the outcome of the Commission for commercial purposes?**

Commercial use of TNO Background – also if it is part of the outcome of the Commission – is subject to our explicit prior written consent. Such consent may be subject to further conditions.

## **11. USE OF FOREGROUND<sup>4</sup>.**

### **11.1 – How may you use the Foreground? Is your right of use an exclusive right?**

You will acquire the right to use the part of the Foreground accrued to TNO – as provided to you by delivery of the Final Report – within the Scope of the Commission, subject to the limitations laid down in this Article 11. The right of use referred to in the previous sentence will be an exclusive right for two years from the date of the final invoice or the date of the Final Report whichever came first, except with regard to any incorporated TNO Background. TNO will be permitted at all times to use its Background during this exclusivity period for the benefit of third parties or have such third parties use it.

### **11.2 – Does TNO investigate the existence of any third-party rights to the Foreground?**

TNO will not investigate the existence of third-party IP Rights to the Foreground, unless explicitly stated otherwise in the Quotation.

### **11.3 – Does the exclusive right of use also apply with regard to calculation methods, software and experimental working methods developed by TNO?**

During the exclusivity period, TNO is entitled at all times to use the calculation methods, software and experimental working methods developed in the context of a Commission, the development of which was not directly intended with the award of the Commission, by or for the benefit of third parties.

### **11.4 – How may TNO use the Foreground?**

TNO acquires the right to make free use at all times of the knowledge and experience gained by TNO during the performance of the Commission on its own behalf, for the benefit of third parties, or have third parties do so, however with due observance of the exclusivity period referred to in 11.1.

## **12. USE OF FINAL REPORT.**

### **12.1 – How may you use a Final Report?**

In connection with TNO's position in society and its

scientific integrity, TNO considers it important for a Final Report to be viewed in its context and that its contents can be examined in their entirety, including any scientific or other nuances. A Final Report, as well as any preliminary or interim reports or subsequent explanatory notes to the Final Report, is therefore intended solely for the Client's own use; any other use requires TNO's prior written consent.

### **12.2 – What is meant by 'any other use' that requires TNO's prior consent?**

'Any other use' as referred to in 12.1 means, among other things:

- a. reproduction or disclosure in whole or in part by means of print, photocopy, in electronic form or in any other way, or storage in a searchable information file;
- b. making available to anyone other than parties with an immediate interest, considering the Scope of the Commission, which also includes use by or on behalf of third parties;
- c. use or allowing the use, in whole or in part, with a view to lodging claims, or taking legal action;
- d. use or allowing the use, in whole or in part, with a view to advertising, promotion or anti-advertising or for soliciting sales or services in a more general sense.

Such prior consent may be subject to further conditions.

## **13. DETERMINATION OF PRICE. PAYMENT.**

### **13.1 – What does 'guide price' mean? What price will be invoiced if no price has been determined in advance?**

If a 'guide price' has been agreed with you, this price is a non-binding estimate of the price for the Commission, excluding the expenses incurred by TNO in consultation with you. In that case, i.e. if a 'guide price' has been agreed with you, or if no price has been agreed with you in advance, the price for the Commission including the expenses incurred by TNO in consultation with you will be determined and invoiced on the basis of actual costs. When calculating the actual costs, TNO will determine the rates applicable to the year in which the part(s) of the Commission is (or are) performed on the basis of the methods generally used at TNO. If the period between the Quotation date and the date on which the work will end is one year or more, TNO will be entitled to index the part of the Commission price not yet invoiced at 1 January each year in accordance with the annual adjustment of the rates used by TNO.

If a 'guide price' has been agreed with you or if no price has been agreed with you in advance, and the price is estimated at more than EUR 20,000, you may ask TNO – before performance of the Commission is commenced – to provide a specification of the invoice according to man hours, man hour rates, direct material costs and, if applicable, costs of equipment use and equipment rates.

<sup>4</sup> See footnote 2.

### **13.2 – Can you agree Go/No-Go milestones with TNO in respect of the Commission?**

In the Agreement, TNO and the Client can only explicitly and in writing determine specific milestones at which the Client may decide to terminate or suspend performance of the Commission, but only with regard to a Commission with a guide price in excess of EUR 20,000. TNO may attach further conditions to the determination of (passing) specific milestones or the ensuing termination or suspension of the Commission. At request, TNO and the Client may make arrangements in that context regarding summary interim reports. Such (preparation of a) summary interim report may be subject to further conditions as well.

### **13.3 – What does ‘fixed price’ mean?**

If a ‘fixed price’ has been agreed with you, this price will be the price for the Commission, excluding the expenses incurred by TNO in consultation with you.

### **13.4 – What happens in the event of additional work?**

If a fixed price as referred to in 13.3 has been agreed with you, but – with your consent – the Commission is changed or expanded, or if it turns out during the performance of the Commission that you did not, or insufficiently, inform TNO about your wishes, requirements or preconditions when the Agreement was concluded, TNO will invoice the additional work resulting from this on the basis of actual costs.

### **13.5 – May TNO require advance and/or interim payment?**

TNO may at all times require you to make advance or interim payment.

### **13.6 – Are the amounts quoted by TNO inclusive or exclusive of VAT?**

All amounts quoted by TNO in a Quotation or Agreement or General Terms and Conditions are exclusive of VAT, unless stated otherwise.

### **13.7 – In which currency are the amounts due to TNO?**

All amounts due hereunder shall be payable in Euros, unless otherwise explicitly agreed in writing.

### **13.8 – Within what term must you pay TNO's invoice?**

TNO requires you to pay its invoice or invoices within thirty (30) days of the invoice date. You may not deduct any TNO invoices from amounts owed by TNO to you, or set off such invoices against such amounts.

### **13.9 – What if you fail to pay the TNO invoice, or fail to pay it in full or in time?**

If you do not pay the TNO invoice within thirty (30) days, nor after having received written notice of default, you will owe TNO interest (i.e. the statutory interest applicable to commercial transactions) and all reasonable costs incurred by TNO to obtain payment of its invoice, in addition to the unpaid invoice amount. Goods still in TNO's possession may be retained by TNO until the TNO invoice and any interest and collection costs have been paid in full or until

you have provided security for payment, for example a bank guarantee. TNO will remain the owner of goods supplied to you by TNO as long as the TNO invoice and any interest and collection costs have not been paid in full. The Client will acquire IP Rights to the outcome of the Commission, or parts of it, on the condition precedent of payment of the price for the Commission.

## **14. CONSEQUENCES OF NON-PERFORMANCE.**

### **14.1 – What are the consequences if TNO or you fail to perform the Agreement?**

If TNO or you fail to perform a material obligation of the Agreement, the other party will submit a written demand to the non-performing party (‘defaulting party’) to perform that obligation within a reasonable period. However, a defaulting party will only be in default when the other party has requested it in writing to perform its obligations within a reasonable period and that period has lapsed without those obligations having been performed.

### **14.2 – Are you or TNO required to perform if the other party fails to perform?**

If the defaulting party still fails to perform after that reasonable period has lapsed, the other party, with due observance of the provisions of 16.5, will no longer be obliged to perform its remaining obligations under the Agreement and may terminate the Agreement.

### **14.3 – Before which date must you inform TNO of any objections you may have regarding the performance of the Commission?**

Any claims you may have against TNO and/or any agents engaged by TNO in the context of performance of the Commission must be explicitly notified to TNO as soon as possible, but in any case before the first anniversary of the date of the final invoice or, if earlier, the date of delivery of the Final Report; claims lodged after that date will lapse, unless you demonstrate that it was impossible for you to notify TNO within the set term.

### **14.4 – What institution will settle disputes between you and TNO?**

If a dispute arises in respect of the Quotation, the acceptance or the performance of the Agreement or any related agreements that TNO and you cannot resolve in mutual consultation, such a dispute will exclusively be submitted - by you or by TNO - to the competent court in The Hague.

## **15. LIABILITY. DAMAGES.**

### **15.1 – For what damage is TNO liable and up to what amount?**

TNO is only liable for loss or damage resulting directly from a failure to perform its obligations that is attributable to TNO. If TNO is liable pursuant to the contractual liability referred to in the previous sentence and/or for any other reason, TNO can only be held liable for direct loss or

damage suffered by the Client up to at most the price due by the Client in respect of the Commission pursuant to 13.

#### **15.2 – For what damage is TNO not liable?**

With due observance of the provisions of 15.1, TNO, including any agents engaged by TNO in the context of performance of the Commission, is furthermore not liable for:

- a. loss or damage suffered by the Client as a result of application or use of the outcome of the Commission, other than in the event of wilful intent or gross negligence on the part of TNO;
- b. loss or damage arising as a result of the fact that the outcome of the Commission cannot be patented or because application of the outcome of the Commission infringes third-party rights;
- c. loss or damage resulting from defects in goods supplied to TNO, including software, that are supplied by TNO to the Client, unless and in so far as TNO can recover such loss or damage from its supplier.

#### **15.3 – What if third parties assert a claim against TNO and/or agents engaged by TNO in the context of performance of the Commission regarding your use of the outcome of the Commission?**

If third parties assert a claim against TNO and/or any agents engaged by TNO in the context of performance of the commission regarding loss or damage arising from application or use of the outcome of the Commission by you or by a third party to whom you have made the outcome of the Commission available, you must fully indemnify TNO and/or any agents engaged by TNO in the context of performance of the Commission, other than in the event of wilful intent or gross negligence on the part of TNO.

#### **15.4 – Can you limit your liability vis-à-vis TNO and/or any agents engaged by TNO in the context of performance of the Commission?**

If TNO staff or any agents engaged by TNO in the context of performance of the Agreement are present on your premises and/or those of third parties in connection with the Commission, TNO and/or any agents engaged by TNO in the context of performance of the Commission will not be bound by any stipulations contained in gate safety or security notices and such that serve to limit the Client's liability under the Agreement or otherwise in whole or in part. You may not invoke any other limitations of liability either, for example in connection with injuries sustained on your premises by agents engaged by TNO in the context of performance of the Commission, against TNO or against any agents engaged by TNO in the context of performance of the Commission.

### **16. END OF THE AGREEMENT. TERMINATION OF THE AGREEMENT.**

#### **16.1 – What is the term of the Agreement and how does it end?**

An Agreement is concluded for an indefinite period of time and ends upon completion of the Commission. TNO will be

deemed to have completed the Commission once TNO has made the Final Report referred to in 4.2 available to the Client. The Agreement will end automatically, with immediate effect and without any obligation to pay damages if:

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

#### **16.2 – Can the Agreement be terminated prematurely?**

The Client may terminate the Agreement prematurely. If the Agreement is terminated prematurely, TNO is entitled to a part of the price, to be reasonably determined. TNO may only terminate the Agreement prematurely for serious reasons within the meaning of Book 7, Article 408 (2) of the Dutch Civil Code.

#### **16.3 – How must the Agreement be terminated prematurely?**

The Agreement is automatically terminated prematurely in the events referred to in 16.1 (a) through (d) or in writing. In the latter case, the date on which the Agreement ends is the date on which the Client or TNO receives the written notification regarding early termination or any later date mentioned in that notification.

#### **16.3 – What are the consequences of early termination?**

In the event of early termination of the Agreement, any preliminary or interim outcome of TNO's work is premature. That is why in the event of early termination, the Client is not entitled to use any preliminary or interim outcome of TNO's work, neither for itself, nor may it use such outcome for the benefit of third parties or have third parties use such outcome. If TNO and you nevertheless explicitly agree in writing that the Client acquires IP Rights to any preliminary or interim outcome of TNO's work, this is done under the condition precedent of payment of part of the price to be reasonably determined by TNO as referred to in 16.2.

#### **16.5 – What provisions will continue to apply after termination of the Agreement?**

In the event that the Agreement ends in any way, the provisions that are intended to continue to apply in full after the end of the Agreement – such as, but not limited to, provisions in respect of liability, rights of use, confidentiality, payment, choice of forum – will continue to apply in full. – **END**

**TNO.NL**