

GENERAL CONDITIONS FOR THE EXECUTION OF ASSIGNMENTS: 2009

of the private company Kiwa Nederland B.V. that has his office in Rijswijk, administrated by the Chamber of Commerce in The Hague, register, 0890048.

Clause 1. Definitions

Kiwa: Kiwa Nederland B.V.;

Client: the party entering into the agreement with Kiwa;

Results: the outcome of the execution of the assignment granted to Kiwa.

Clause 2. Applicability

2.1 Unless agreed upon otherwise in writing, these General Conditions shall apply to all tenders and agreements regarding assignments to be carried out by Kiwa.

2.2 Modifications of, supplements to, and/or extensions of the agreement, or stipulations in derogation of these General Conditions, shall only be binding on Kiwa if agreed upon explicitly in writing between the parties.

2.3 Applicability of the sections 7:404 and 7:407 paragraph 2 of the Dutch Civil Code is excluded.

Clause 3. Establishment of the assignment

3.1 Unless indicated otherwise, the tenders of Kiwa are without any engagement.

3.2 An assignment is established at the moment at which the written acceptance of the tender submitted by Kiwa is received from the client by Kiwa unless Kiwa revokes its offer within two working days after the receipt of the aforementioned acceptance. If an assignment is granted in a different manner, the assignment is established at the moment at which the written confirmation of the assignment is sent by Kiwa of after Kiwa has started the actual execution of the assignment.

Clause 4. Execution of the assignment

4.1 Kiwa has no other obligation than the obligation of carrying out the assignment, that must be seen as an obligation to perform to the best of one's ability. There shall only be more far-reaching obligations if and to the extent to which such obligations have been agreed upon explicitly.

4.2 The duration of the assignment is an indefinite period of time, unless agreed upon otherwise.

4.3 The proposals contained in the tender are confidential, shall remain the property of Kiwa, and are not allowed to be used or disclosed to third parties by the client.

4.4 Terms listed by Kiwa, including the terms for the carrying out of the assignment, shall not be strict.

4.5 If Kiwa and client agree that the assignment will be modified, supplemented and/or extended, inter alia the quality and point of time of completion shall be laid down in writing again.

4.6 Client shall see to it that all information that Kiwa indicates to be necessary, or that should in all fairness be understood by client to be necessary for the execution of the assignment, will be available to Kiwa timely. If the information necessary for the execution of the assignment has not been made available to Kiwa timely, Kiwa shall have the right to suspend the execution of the assignment.

4.7 Kiwa is not liable for damage or losses, of whatever nature, caused by the fact that Kiwa has based its activities on incorrect and/or incomplete information provided by the client.

4.8 Client shall see to it that facilities such as auxiliary staff, auxiliary equipment and materials will be made available to Kiwa free of charge, in such a manner that Kiwa will be able to carry out the work activities at the site of, and/or regarding the installations of, the client in a safe manner.

4.9 If the auxiliary staff, auxiliary equipment and materials do not comply with the regular safety prescriptions, Kiwa reserves the right to suspend or, as the case may be, to cancel the execution of its work activities. In that case the Client shall be obliged to compensate Kiwa for all costs and damage/losses resulting from this for Kiwa (including in any case costs of travel and traveling time).

4.10 In buildings and/or at sites of the Client Kiwa shall comply with the (company) rules applying there and shall duly observe instructions by or on behalf of the Client.

4.11 If the assignment (also) concerns the examination of samples the client shall be responsible for the selection, and in particular for the representativeness of the samples, and for making available the samples to Kiwa, unless it is agreed upon otherwise.

4.12 If desirable within the framework of a correct or timely execution of the assignment in the opinion of Kiwa, Kiwa shall have the right to have third parties or personnel employed by third parties carry out the assignment.

Clause 5. Prices and tariffs

5.1 If it has not been agreed upon otherwise, Kiwa shall invoice retroactively on the basis of the actual costs in accordance with the tariffs of Kiwa, where applicable to be increased by costs regarding work or deliveries carried out by third parties.

5.2 The prices and tariffs may be adjusted to the development of salary costs and modifications of other costs at the end of each calendar year.

If the increase of the prices and tariffs amounts to more than 10% in any year, the client shall have the right to terminate the agreement. In that case termination must occur immediately after the client has been informed about the increase.

5.3 If a fixed amount has been agreed upon as referred to in clause 5 paragraph 1, the costs that in all fairness could not be foreseen at the time of entering into the agreement may be charged separately.

Clause 6. Liability

6.1 Kiwa shall only be liable towards client for damage or losses suffered by client if such damage or losses are a direct consequence of willful intent or gross negligence (in the sense of willful recklessness) on the part of managers or personnel of Kiwa.

6.2 If it is established, in cases in which there is no willful intent or gross negligence on the part of Kiwa as referred to in paragraph 1 of the clause, that Kiwa is nevertheless liable, then that liability shall be limited to the amount owed to Kiwa under the assignment in question at most.

6.3 In derogation from the provisions of the paragraphs 1 and 2 of this clause, the liability of Kiwa shall be limited, if the liability insurer of Kiwa offers any coverage, to the amount that can be claimed successfully in the case in question from the insurance company.

6.4 Within the framework of the limitations created in paragraph 1 through 3 of this clause, Kiwa shall only be liable for the work in as far as carried out by Kiwa itself or under its responsibility, and Kiwa in particular does not guarantee the correctness of information received from third parties if it has not been mentioned explicitly that such information was investigated and found to be correct by Kiwa. However, if the client, or any third party acting as supplier of client, accepts results originating from Kiwa, whether or not following its own investigations, as being sound, Kiwa shall no longer be liable for any damage or losses as a consequence of the application of those results.

6.5 Any liability on the part of Kiwa shall lapse after the expiration of two years, to be calculated from the day of the ending of the assignment, unless client has instituted a claim against Kiwa within this term.

6.6 Client shall indemnify Kiwa with respect to damage or losses caused by or as a directed consequence of the carrying out of the assignment against all claims of third parties, against whom Kiwa can not invoke these conditions. Within this frame of reference third parties shall be understood to include personnel employed by client and other persons used by client in executing its work. Client shall only be bound by the obligation of indemnification mentioned in this paragraph if Kiwa can also invoke exclusion or limitation of liability against client.

6.7 Client shall indemnify Kiwa against all claims and claims for damages of third parties regarding results originating from Kiwa, if those results have made available to those third parties, whether or not with the permission of Kiwa.

6.8 Kiwa hereby stipulates for the benefit of third parties used by Kiwa, their bodies and personnel the applicability of all provisions regarding exclusion or limitation of the liability of Kiwa and regarding indemnification by client for claims of third parties.

6.9 Kiwa shall not be liable towards client for any violation of rights of third parties or of legal prescriptions applying outside the Netherlands, unless such rights and prescriptions have been notified to Kiwa in writing before the conclusion of the agreement.

6.10 Kiwa shall not be obliged to investigate patent rights of third parties.

Clause 7. Secrecy

7.1 Both parties shall be obliged to observe strict secrecy with respect to all confidential information they have obtained from each other within the framework of the assignment. Information shall be deemed to be confidential if it has been notified to be confidential by the party that provides the information, if this results from the nature of the information, or should be recognized as such by client in all fairness.

7.2 Kiwa shall not make available any results obtained by the execution of the assignment to third parties.

7.3 The obligations of secrecy as mentioned in clause 7, paragraphs 1, 2 and 5, shall not apply to information or results that:

- a. are of a general nature, i.e. that do not concern in particular the client's own conduct of business and/or work activities;
- b. are generally known or, as the case may be, that become generally known, without this being due to any reproachable acts or omissions on the part of Kiwa;
- c. were obtained by Kiwa in a legal manner from a third party, or from research by Kiwa itself;
- d. have been or are marked as non-confidential in consultation with client.

7.4 The obligation of secrecy mentioned in the paragraphs 2 and 5 of this clause shall not apply:

- a. if and in as far as Kiwa deems it to be necessary to give an explanation to third parties as a consequence of disclosures by client to third parties;
- b. if secrecy is in contravention of any prescriptions of or under the law;
- c. if inspection thereof is requested for internal and external audits for the granting or renewal of accreditations of laboratory, inspection activities and or product -and management system certification schemes;
- d. if there is a threat of harm being inflicted on human beings or goods.

7.5 At the request of client Kiwa shall keep the name of the client and the fact that investigations were carried out confidential.

7.6 In the case of application of clause 7 paragraph 4 under c, Kiwa stipulates the observance of secrecy by auditors with respect to the information made available to them for inspection.

7.7 In the case of application of clause 4 paragraph 9 third parties involved in the execution of the assignment may be provided information to which an obligation of secrecy applies. Kiwa hereby stipulates that those third parties shall observe secrecy with respect to the information provided to them.

Clause 8. Results

8.1 Within the framework of conducting its own business the client is completely at liberty to use the results delivered by Kiwa.

8.2 Kiwa has the right to use the results of the assignment free of charge for the conduct of its own business, with due observance of the provisions of clause 7 regarding secrecy.

8.3 Kiwa has the right to (allow the) use the know-how and experience such as methods of calculation, software and experimental methods of operation resulting from the execution of the assignment free of charge for the conduct of its own business, in as far as the development thereof was not the direct purpose or aim of the assignment in question.

8.4 Kiwa shall keep the goods, inclusive of any samples, made available to it, in custody for a period of two weeks after the date on which client has been informed of all results, unless this is not possible in all fairness or it has been agreed upon otherwise. If client has not arranged for the return of the goods in question within that period, Kiwa shall be at liberty to either destroy the goods or to take other measures.

Clause 9. Publication

9.1 Without the prior written permission from Kiwa, the client shall not have the right to (allow the) use documents of Kiwa, such as reports, recommendations and such for the institution of claims or the conducting of legal proceedings.

9.2 It is permissible to publish reports, provided that they are published in their entirety and without any additions or omissions. Derogation from the conditions, or publication in another language than the original language, require prior permission from Kiwa.

9.3 The client shall at all times be obliged to give Kiwa its full cooperation in giving explanations and comments, also towards third parties, if the client publishes results in a manner that causes or may cause a misrepresentation, misunderstanding and such.

Clause 10. Payment, retention of title, costs of collection

10.1 Payment shall be made in euros without any deductions or setting off within 30 days of the date of the invoice, unless it has been agreed otherwise. Any complaints regarding the invoice, that must also be submitted within the term mentioned, shall not suspend the obligation to pay.

10.2 If the client fails to pay within the term stipulated, it shall be deemed to be in default by operation of law. Starting from the moment of default the client shall owe an interest over the amount that is due and payable equal to the legal interest plus 2%.

10.3 Kiwa is authorized to use the payments made by the client primarily for the settlement of all interests and costs due, and secondly for the payment of the payable invoices that have been outstanding for the longest time, even if the client mentions that the payment concerns a later invoice.

10.4 Kiwa shall be allowed at all times to send interim invoices and/or require advance payments.

10.5 If Kiwa takes any collection measures against a client that is in default, the cost of that collection - being at least 10% of the outstanding amounts - shall be for the account of that client.

Clause 11. Termination, interruption or extension of the assignment

11.1 The date on the final invoice from Kiwa shall be deemed to be the date of the termination of the assignment.

11.2 In the absence of such an invoice Kiwa shall determine the date on which the assignment can be deemed to have terminated in all fairness.

11.3 Client shall compensate Kiwa for all costs and losses resulting from termination or interruption by client of any assignment, without prejudice to the right of Kiwa to take legal measures.

11.4 Kiwa shall in any case have the right to end the assignment and to terminate the agreement if an interruption by the client lasts longer than six months. The date of the letter from client or Kiwa in which the interruption is announced or, in the absence thereof, the date of the letter evidencing such interruption, shall be deemed to be the date of commencement of the interruption.

11.5 In the case of a delay or extension of the work activities of the assignment, Kiwa shall be allowed to charge extra costs if Kiwa can not be blamed for the delay or extension.

Clause 12. Termination

12.1 Without prejudice to the provisions of the preceding clauses, the client shall be deemed to be in default by operation of law if it fails to perform any obligation resulting from the assignment for client or fails to perform such obligation timely or properly, and also in the event of its bankruptcy, it being granted a moratorium or if it is placed under any administration or guardianship.

In that case Kiwa shall have the right, without any notification of default or judicial intervention being required, to suspend the execution of the assignment or to terminate the agreement fully or partially without Kiwa being obliged to pay any compensation for losses or damage but without prejudice to its right to receive compensation for damage or losses resulting from attributable failure to perform and the suspension or termination. In those cases all claims that Kiwa has against the client shall be due and payable forthwith.

12.2 The provisions in paragraph 1 of this clause regarding the right to terminate shall not apply if the failure to perform does not justify such termination and its consequences in view of the particular nature or unimportance of the failure to perform.

Clause 13. Disputes / applicable law

13.1 In derogation from the legal rules regarding the competence of the civil court, all disputes between the client and Kiwa, shall be solved by the court in The Hague if that court is competent to hear the case. However, Kiwa shall remain authorized to submit a dispute to any court competent under the law or any international treaty or convention that is applicable.

13.2 All agreements concluded with Kiwa are governed exclusively by Dutch law.

Clause 14. Translations

In the event of any conflicts between the Dutch text of these General Conditions and translations thereof, the Dutch text shall prevail.

Clause 15. Validation

These General Conditions for the Execution of Assignments shall take effect on December 1, 2009