

General Terms and Conditions for research assignments to TNO

The Netherlands Organisation for Applied Scientific Research TNO

TNO | Knowledge for business



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In these General Terms and Conditions for research assignments to TNO, TNO is understood to mean the “*Nederlandse Organisatie voor toegepast-natuurwetenschappelijk Onderzoek TNO*” (Netherlands Organisation for applied scientific research TNO), a legal entity established under Dutch law with registered office in Delft.

These General Terms and Conditions have been adopted by TNO and filed with the Registry of the District Court in The Hague and with the Chamber of Commerce and Industry for Haaglanden.

Any general purchase conditions or other general terms and conditions used by the Principal will not apply to the legal relationship between the Principal and TNO, and are hereby expressly rejected.

1. Scope of the assignment, quotation

1.1 The scope of the assignment is determined by the description of the activities in the quotation, including all changes which will be made afterwards in mutual consultation.

1.2 The agreement for carrying out the assignment will be concluded by the Principal's confirmation of TNO's quotation. If the Principal has in any way failed to confirm the quotation and TNO has nevertheless commenced carrying out the assignment with the Principal's consent, the content of the quotation will be considered as agreed. The agreement with all annexes contains all arrangements between the parties and will replace all other arrangements, commitments and agreements on the matter between the parties.

1.3 The results of the assigned work will be indicated in the quotation: written advice, report, model, software, etc.

1.4 Unless stated otherwise in the quotation, TNO will stand by its quotation during one month from the quotation date.

1.5 Amendments, additions and/or extensions of the assignment, or deviations from the General Terms and Conditions will only be binding after they have been agreed upon in writing between the parties, and will only relate to the research assignment for which they have been drawn up.

1.6 The Principal will use the quotation made by TNO and the knowledge and ideas of TNO included in it exclusively for evaluating his interest in granting the assignment. This provision also applies to proposals for amending, supplementing and/or extending the assignment.

1.7 Unless expressly included in the quotation, investigations into the existence of third party patent rights or into patenting possibilities will not be part of the assignment.

2. Execution of the assignment, result

2.1 The assignment will be carried out within the (estimated) period stated in the quotation in consultation with the Principal, unless this should prove impossible. If the period threatens to be exceeded, TNO will be obliged to consult as soon as possible with the Principal. TNO will not be in default without notice of default by the mere expiry of the period.

2.2 The acceptance of the assignment implies that when carrying out the assigned work TNO will solely undertake no other obligation than to aim at a result which is useful for the Principal.

2.3 If the assignment (also) includes the delivery of a material object, it applies that in respect of this material object TNO will give no other guarantee than as described in the quotation.

2.4 If the assignment (also) concerns the testing of samples, it applies –apart from the case in which it has been agreed that TNO will be responsible for selecting the samples– that the Principal will be solely responsible for the selection and representativeness of the samples, for indicating codes, trademarks or product names and for making the samples to be investigated available to TNO.

2.5 TNO will not be obliged to commence carrying out the assignment before all substances or objects to be made available by the Principal to TNO have in fact been made available to TNO in the agreed form and numbers. The period referred to in article 2.1 will be automatically extended by any delay that may be caused by this.

2.6 The Principal will carry the risk of any misunderstandings in respect of the content and performance of the agreement, if these should in reason be for the Principal's risk or have been caused by specifications not received by TNO or received incorrectly, not in time or incompletely, or by other information given orally or by a person designated for this purpose by the Principal or transmitted by any technical means such as e.g. by telephone, fax, e-mail and similar communication media.

2.7 TNO will inform the Principal of manifestly apparent shortcomings in the agreed research methods and other particulars that become apparent in the research, which in TNO's opinion are of importance to the Principal.

3. Secrecy

3.1 If so agreed upon when granting the assignment, TNO undertakes to maintain secrecy in respect of the Principal's name and of the fact that the research has been carried out during a period which in principle will end two years after the date of the final invoice of the assignment or two years after the date of the final report if the latter is delivered earlier.

3.2 TNO undertakes to maintain secrecy in respect of the results of the assignment, as provided by TNO to the Principal, apart insofar as it concerns calculation methods, software and experimental working methods whose development was not directly intended with the assignment. As regards inspections, analyses, measurements or literature searches the obligation to observe secrecy will be confined to the outcome of the inspection, analysis, measurement or search carried out. Unless otherwise agreed upon when granting the assignment, TNO's obligation of secrecy will continue until two years from the date of the final invoice of the assignment or until two years from the date of the final report if the latter is delivered earlier. If required, TNO will classify the results for which an obligation of secrecy applies in accordance with the provisions in this article in consultation with the Principal.

3.3 TNO will be obliged to observe secrecy in respect of proprietary data of the Principal which become known to TNO when carrying out the assignment and which the Principal has expressly designated as confidential.

This obligation to secrecy does not apply:

- to data which were already in TNO's possession when the data were given to TNO;
- to data which are or will become publicly known, without this being due to any imputable acts or omissions by TNO;
- to data which TNO obtains in a rightful way from a third party, or from its own research, without using the secret data in any way.

3.4 If any misunderstanding arises due to the Principal disclosing results of the research, TNO will be released from the obligation to secrecy to the extent as is in reason required for TNO to clarify the results to third parties.

3.5 TNO's obligation to secrecy does not apply if and when TNO identifies serious danger for persons or goods. In that case TNO will, if possible, enter into consultations with the Principal, before informing those whose person or goods are threatened and/or the competent authorities of the danger situation.

3.6 The Principal's permission is required for engaging third parties for carrying out the assignment, if and insofar as this creates a foreseeable risk in respect of secrecy.

3.7 Only if this has been agreed upon in writing when granting the assignment, TNO will be obliged during the execution of the assignment to refrain from accepting assignments from third parties within the scope of the assignment.

4. Rights to results

4.1 Within the scope of the assignment the Principal will have the full and free right of use of the results of the assignment as provided by TNO to the Principal. This right of the Principal is exclusive for the period in which TNO is obliged to observe secrecy in accordance with article 3.2, this subject to the provisions in articles 4.2 and 4.4.

4.2 In the period in which TNO is obliged to observe secrecy in accordance with article 3.2, TNO will have the right to use the results of the assignment as referred to in article 4.1 solely for itself.

4.3 After expiry of the period in which TNO is obliged to observe secrecy in accordance with Article 3.2, TNO will also have the right to use the results as referred to in article 4.1 for third parties and to let third parties use them.

4.4 TNO will have the right to use for itself and/or for third parties and/or to let third parties use:

- a. the knowledge and experience available at TNO when accepting the assignment;
- b. the knowledge and experience outside the scope of the assignment obtained by carrying out the assignment;
- c. calculation methods, software and experimental working methods resulting from carrying out the assignment, insofar as their development was not directly intended with granting the assignment.

4.5 Without prejudice to the provisions in article 7.7, the Principal will be entitled to or be the owner of reports, drawings and other material objects which are the result of the work assigned in conformity with article 1.3, subject to TNO's copyright.

5. Disclosure

Without TNO's prior permission in writing the Principal will not be permitted:

- a. to multiply and/or disclose in whole or in part a report issued by TNO by having it printed, photocopied, put on microfilm, in electronic form or in any other way, or to store it in a retrieval system;
- b. to make a report issued by TNO available for inspection outside the circle of persons who, taking into account the scope of the assignment, are directly interested parties;
- c. to use (or let others use) in whole or in part a report issued by TNO for instituting claims, for conducting legal proceedings, for advertisements or negative publicity and for recruitment in a more general sense;
- d. to use TNO's name, in whichever connection, when disclosing part or parts of a report issued by TNO and/or for any of the purposes mentioned under c.

6. Protection of knowledge

6.1 Insofar as the assignment carried out by TNO will lead to patentable matter, TNO will have the right to apply for a patent in its own name and for its own account. While doing so, TNO will comply with its obligation to secrecy resulting from article 3.

6.2 TNO and the Principal will report to each other:

- a. their presumption that patentable matter has been found;
- b. the fact that a patent application is filed;
- c. the content of such application.

They will further render each other all required cooperation when filing patent applications.

6.3 If TNO does not wish to make use of its right as referred to in article 6.1, this right will pass on to the Principal if and insofar as the patent application (also) concerns the results as referred to in article 4.1.

6.4 If TNO or the Principal exercises their rights from article 6.1 or article 6.3, the applicant/holder of the patent will be deemed to have granted the other party a licence free of charge from which the parties can derive rights to which they are entitled by virtue of the provisions in article 4. The other provisions of the assignment will apply by analogy to the granting of the licence.

6.5 The applicant/holder may withdraw a patent application at any time, or let a granted patent lapse. If the Principal or TNO has been granted a licence, they will have the first opportunity to transfer the application or the patent in their name.

7. Price and payment

7.1 If a 'fixed price' has been stated in the quotation, this price will be considered as the agreed price. If no 'fixed price' has been included in the quotation, it is established between the Principal and TNO that the amount to be paid will be determined by subsequent calculation on the basis of the rates agreed upon at the assignment. If no rates have been agreed upon in advance, the rates will be determined on the basis of TNO's customary methods. If a 'guide price' is mentioned in the quotation, the amount stated will merely indicate a cost estimate without obligation. In this latter case, when there is a period of one year or longer between the date of the quotation and the date on which the work (will) end, TNO will furthermore each time as of 1 January be entitled to index the part of the price of the assignment that has not yet been invoiced in accordance with the annual adjustment of TNO's rates.

7.2 At the Principal's request, TNO may limit itself to a maximum amount in case of assignments of € 15,000 and more with an expected duration of three months or longer. This will automatically release TNO of the obligation to continue the activities insofar as by doing so the amount to be spent in carrying out the assignment would exceed such maximum amount.

7.3 If no 'fixed price' has been included in the quotation and the assignment involves an amount exceeding € 25,000 and if the Principal so requests when granting the assignment, TNO will specify the invoice in question in man-hours and man-hour rates, direct material costs and, insofar as applicable, use of equipment and rates for such use, as well as fees for pre existing know how used.

7.4 Unless stated otherwise, all amounts mentioned by TNO in the quotation are exclusive of turnover tax.

7.5 TNO reserves the right to send interim invoices. TNO may at all times demand payment in advance.

7.6 The Principal is obliged to pay the invoices in the currency mentioned in the quotation, without any right to deduction or setoff, within fifteen days from the invoice date and to pay both the statutory interest for trade agreements and the collection costs if the Principal exceeds this payment period of fifteen days.

7.7 All items made available by TNO to the Principal within the framework of the assignment, including the material objects as referred to in article 4.5, will remain the property of TNO until the amount(s) payable by the Principal to TNO in connection with the assignment has (have) been paid in full.

8. Liability

8.1 TNO will only be liable for damage or loss which is the direct consequence of an attributable shortcoming by TNO in the performance of its obligations. If, on account of the contractual liability referred to in the preceding sentence and/or for any other reason, TNO is liable, it will apply that TNO will only be liable for direct damage or loss of the Principal to at most the amount of the price due by the Principal by virtue of article 7.1.

8.2 TNO and/or persons employed and/or called in by TNO for carrying out the assignment will not be liable for damage or loss which the Principal suffers when applying or using the result of TNO's work, unless there is a question of intent or gross negligence on the part of TNO and/or on the part of persons employed and/or called in by TNO for carrying out the assignment.

8.3 The Principal indemnifies TNO and/or persons employed and/or called in by TNO for carrying out the assignment against all claims from third parties on account of damage or loss suffered by these third parties resulting from the application or use of the result of TNO's work by the Principal or by another person to whom the Principal has made available the said result, unless there is a question of intent or gross negligence on the part of TNO and/or on the part of persons employed and/or called in by TNO for carrying out the assignment.

8.4 In case persons employed and/or called in by TNO for carrying out the assignment are present on the premises of the Principal and/or on the premises of third parties in connection with the assignment, TNO and/or persons called in by TNO for carrying out the assignment will not be bound to stipulations in access permits and suchlike to the effect that the Principal's liability arising from the agreement is limited in whole or in part.

8.5 TNO does not accept any liability for damage or loss which arises due to the fact that the results of the activities do not qualify for patenting or because rights of third parties are infringed when applying the results.

8.6 TNO does not accept any liability for damage or loss which is the result of defects in items supplied to TNO, including software, which TNO has supplied on to the Principal, unless and insofar as TNO has recourse on its supplier for such damage or loss.

9. Storage and objects of research

Unless otherwise agreed upon when granting the assignment, TNO will store the items, including (the remainders of) samples that have been made available to TNO in connection with the assignment, if in reason possible, for two weeks from the date on which the Principal has been informed about the results of the research. Any costs attached to this will be deemed to have been included in the price stated in the quotation. If within this period the Principal has failed to make an arrangement for returning the items referred to, TNO will be free to take appropriate measures. Any costs attached to this, including also costs incurred with respect to storage for a longer time, will be borne by the Principal.

10. Miscellaneous

10.1 In case of activities in connection with the assignment on the premises of the Principal, the Principal will make available to TNO free of charge auxiliary personnel and tools, if requested by TNO well in advance.

10.2 When staying in buildings and/or on premises of TNO the Principal and/or his personnel are/is obliged to comply with the 'house rules' which apply for the users of the buildings or premises involved. The Principal will see to it that his personnel will act in accordance with the above provision.

10.3 If either the Principal or TNO fails to comply with any essential obligation from the agreement, the other party will notify the defaulting party of this in writing and allow the defaulting party a reasonable period to as yet perform its obligations. In case the defaulting party fails to as yet perform its obligations within the stipulated period, its rights from the agreement will lapse and the other party will no longer be obliged to perform any of its own obligations.

10.4 Claims from the Principal on TNO resulting from or connected with the execution of the assignment by TNO and/or by persons employed and/or called in by TNO for carrying out the assignment, will lapse in full if such claims have not expressly been made known within one year from the date of the final invoice, unless the Principal shows that he was unable to comply with his duty to report within the stipulated period.

10.5 If TNO has in its possession any object of the Principal in order to carry out research on it, TNO will be entitled to keep the object in its possession, until all amounts payable by the Principal in connection with the assignment have been paid in full, unless the Principal has provided adequate security for those amounts.

11. Disputes

11.1 All disputes that might arise as a result of the agreement, or of further agreements resulting from it, will be submitted for exclusive settlement to the competent court in The Hague.

11.2 The agreement as referred to in article 1.2 is governed by the laws of the Netherlands.