

## **General Terms and Conditions of Kiwa for the performance of orders: 2014**

**These General Terms and Conditions are used by Kiwa N.V. as well as its current or future direct or indirect subsidiaries, if declared applicable by the subsidiary in question.**

### **Article 1. Definitions**

- 1.1** Offer: the quotation and/or estimate submitted by the Contracted Party to the Client with respect to the provision of services by the Contracted Party;
- 1.2** Additional work: all work carried out by the Contracted Party during or after the performance of the Agreement in addition to the work explicitly agreed on;
- 1.3** Client: the party that enters into the Agreement with the Contracted Party;
- 1.4** Contracted Party: Kiwa N.V. or the direct or indirect subsidiary of Kiwa N.V. that enters into the Agreement;
- 1.5** Agreement: any agreement that is formed with respect to performance of work by the Contracted Party for the Client, any change or addition thereto, and all juristic or other acts in preparation and/or performance of that Agreement;
- 1.6** Results: the outcome of the performance of the order by the Contracted Party.

### **Article 2. Applicability**

- 2.1** Unless explicitly agreed otherwise in writing, these General Terms and Conditions apply to all Offers, Agreements and all other legal relationships between the Contracted Party and the Client.
- 2.2** Changes, additions and/or extensions of these General Terms and Conditions, and/or stipulations varying from these General Terms and Conditions, will only be binding on the Contracted Party if they have been agreed on between the parties explicitly and in writing.
- 2.3** The applicability of any general or specific terms and conditions or stipulations of the Client is explicitly rejected by the Contracted Party, unless explicitly agreed otherwise in writing in advance.
- 2.4** A Client in respect of whom these General Terms and Conditions have applied is also deemed to have agreed to the application of these General Terms and Conditions to subsequent Offers submitted by the Contracted Party, to subsequent Agreements concluded and to be concluded by the Contracted Party with the Client and to all other subsequent legal relationships between the Contracted Party and the Client.
- 2.5** If, in the opinion of the competent court, any provision of these General Terms and Conditions does not apply or is in violation of public order or the law, only the provision in question will be disregarded and these General Terms and Conditions will remain in full force in all other respects. A provision that most approaches the parties' intentions will replace any invalid provision.
- 2.6** The Contracted Party is authorised to amend these General Terms and Conditions. Such amendments take effect at the time communicated by the Contracted Party.

### **Article 3. Offer, Order and formation of the Agreement**

- 3.1** Unless stated otherwise, the Contracted Party's Offers will be subject to contract and can always be revoked by the Contracted Party. Offers will be valid for one month, unless agreed otherwise.
- 3.2** An Agreement is formed at the time that the Contracted Party receives the written acceptance from the Client in respect of the quotation submitted by the Contracted Party, unless the Contracted Party revokes its offer within two working days of receipt of the stated acceptance. If an order is given in any other manner, the Agreement will be formed at the time that the written confirmation of the order is sent by the Contracted Party or after the Contracted Party has started with the actual performance of the order.

- 3.3** All images, drawings, statements about measurements and weights, calculations, statements concerning capacities, results and/or expected performance, etc. provided by the Contracted Party will not be binding on the Contracted Party and are only meant to give a general representation of the services to be rendered by the Contracted Party.
- 3.4** If the Client provides the Contracted Party with documents, data, drawings, etc. upon its request for a quotation, the Contracted Party should be able to assume their correctness and will base its Offer thereon.

#### **Article 4. Performance of the Agreement**

- 4.1** The Contracted Party is not obliged to do more than perform the Agreement to the best of its ability, which must be considered to be a best efforts obligation. Further obligations only exist if and to the extent that such has been agreed on in writing.
- 4.2** The Agreement is always entered into for an indefinite period of time, unless otherwise agreed in writing.
- 4.3** The periods stated by the Contracted Party, including the periods for performance of the Agreement, are indicative and can never be considered strict deadlines.
- 4.4** If the Contracted Party and the Client agree that the Agreement will be changed, supplemented and/or extended, they will renegotiate the consequences for the price, quality and moment of completion, among other things. Changes to, additions to and/or extensions of the Agreement will only be binding if they have been agreed between the parties in writing or if the Agreement is performed by the Contracted Party in accordance with the changes, additions and/or extensions.
- 4.5** The Contracted Party will not be obliged to perform Additional Work as long as the Client has not given a written order for the performance of Additional Work and as long as the payment or provision of security required by the Contracted Party has not been issued. In the absence of specific arrangements in that respect, the work will be carried out by the Contracted Party at prices that are based on the rates that apply at the Contracted Party for such work.
- 4.6** Any drawings, designs, specifications, locations, instructions, inspection regulations, etc. made available to the Contracted Party prior to the performance of the Agreement or prior to entering into the Agreement or approved by the Contracted Party, regardless of their form, are part of the Agreement, unless agreed otherwise in writing.
- 4.7** The Client will arrange that all data with respect to which the Contracted Party indicates that they are required or with respect to which the Client should reasonably understand that they are required for the performance of the Agreement are provided to the Contracted Party in good time. If any data required for the performance of the Agreement have not been provided to the Contracted Party in good time, the Contracted Party will be entitled not to start with the performance of the Agreement and/or to suspend performance of the Agreement and/or charge the additional costs ensuing from the delay to the Client at the usual rates.
- 4.8** The Client arranges that facilities are made available to the Contracted Party free of charge, such as auxiliary staff, auxiliary plant and equipment, to enable the Contracted Party to carry out the work at the Client's site and/or to the Client's installations safely and the Client will point out any potentially dangerous situations to the Contracted Party.
- 4.9** If auxiliary staff, auxiliary plant and equipment do not comply with the customary safety regulations, the Contracted Party reserves the right to suspend the performance of its work and/or not to perform the work. In that case, the Client will be obliged to compensate the Contracted Party for all resulting costs (including travelling expenses and travelling time) and damage or loss.
- 4.10** During stays in the Client's buildings or at the Client's sites, the Contracted Party will obey the applicable company and other rules and comply with directions given by or on behalf of the Client. During stays in the Contracted Party's buildings or at the Contracted Party's sites, the Client will obey the applicable company and other rules and comply with directions given by or on behalf of the Contracted Party.
- 4.11** If it has been agreed that the Agreement will be performed in phases, the Contracted Party may suspend performance of such parts as pertain to a subsequent phase until the Client has approved the results of the preceding phase in writing.

- 4.12** If the Agreement pertains to sample analysis, the Client is responsible for the selection, representativeness, designation of codes, brand and product names and for making the analysis samples available to the Contracted Party.
- 4.13** If the Contracted Party deems such desirable, for purposes of a correct or timely performance of the order, it is authorised to have the order performed by third parties. All provisions pertaining to the exclusion or limitation of liability on the Contracted Party's part and concerning the indemnification by the Client against third-party claims will apply to these third parties, their bodies and staff.
- 4.14** The Contracted Party will only outsource accredited and certified work to a third party that has the accreditation and/or certificates required for the work.
- 4.15** The Client is not authorised to fully or partially transfer the rights and obligations arising from the Agreement or resulting Agreements to third parties.
- 4.16** The Client will not exert improper pressure on the Contracted Party and employees of the Contracted Party in the performance of the order.
- 4.17** Any failure in the performance of this Agreement discovered by the Client must be reported to the Contracted Party immediately and in writing with a clear description, failing which the Contracted Party is entitled not to deal with this report. The Client cannot enforce any rights if the notification to the Contracted Party takes place more than five working days after the time when the Client could reasonably have discovered the failure. If the Contracted Party's report is deemed well-founded and the notification was made within the stated period, the Contracted Party has the option, without being obliged to pay any further compensation, to either remedy the failure in its services or to issue a credit note for the services rendered up to the invoice amount at most.
- 4.18** All juristic or other acts and actions performed by an officer or employee of the Client within the scope of the formation, performance and amendment of an Agreement between the Contracted Party and the Client will be deemed to have been performed on behalf of the Client and are binding on the Client. In dealings with the Contracted Party, the Client cannot rely upon the fact that in respect of these acts or actions there is no authority to legally represent or bind the Client.

#### **Article 5. Prices and rates**

- 5.1** All prices are in Turkish Liras **or Euros** and, unless agreed otherwise in writing, always exclusive of VAT, travelling and accommodation expenses, waiting hours/delays caused beyond the Contracted Party's control, not including costs with respect to work performed or deliveries made by third parties.
- 5.2** Changes to salary costs may be charged on in the prices and rates immediately. In addition, the prices and rates may be adjusted once every calendar year to the changes to the other costs. The Client is entitled to terminate the Agreement if the increase in the prices and rates amounts to more than 10% a year. In that case, termination must take place immediately after the Client learns of the increase.

#### **Article 6. Liability**

- 6.1** The Contracted Party is only liable towards the Client for damage or loss if and to the extent provided in these General Terms and Conditions.
- 6.2** If the Contracted Party's liability is established, with due observance of the following articles, it will be limited to twice the amount due pursuant to the Agreement. In the case of continuing performance contracts, liability will be limited to twice the amount due in the last six months. Liability will in no event exceed a sum of €250,000.
- 6.3** If the Contracted Party's liability is established, the Contracted Party will be obliged to compensate the direct damage or loss only. Direct damage or loss will not in any instance include: trading loss, loss of production, loss of turnover and/or profits, decrease in value of products or sums that would have been included in the performance costs had the order been carried out properly from the start.

- 6.4** The Contracted Party is only liable for the work that has been carried out by the Contracted Party or under its responsibility and the Contracted Party particularly does not warrant data received from third parties if it has not been stated explicitly that these data were examined by the Contracted Party and found to be correct.
- 6.5** Any liability on the part of the Contracted Party expires after two years have passed, to be calculated from the day of termination of the Agreement or part of the Agreement, unless the Client has instituted legal action against the Contracted Party within these periods.
- 6.6** The Client will indemnify the Contracted Party, with respect to damage or loss caused by or as a direct consequence of the performance of the order, against claims from third parties in respect of whom the Contracted Party cannot rely upon these terms and conditions. Within this scope, third parties also include the Client's staff and other persons whose services the Client uses in the performance of its work. The Client is only obliged to indemnify the Contracted Party if the Contracted Party can also rely on exclusion or reduction of liability vis-à-vis the Client.
- 6.7** The Client indemnifies the Contracted Party against all third-party claims and claims for compensation with respect to reports etc. from the Contracted Party if they have been made available to those third parties by the Client, whether or not with the Contracted Party's consent.
- 6.8** The Client is fully liable for damage or loss at the Contracted Party caused by contamination of the equipment provided or by improper packaging of equipment to be delivered as well as for the resulting consequential damage or loss.
- 6.9** The Contracted Party is not liable vis-à-vis the Client for infringements of third-party rights or statutory provisions that apply outside Turkey, unless those rights and provisions were communicated to the Contracted Party by the Client in writing prior to concluding the Agreement.
- 6.10** The Contracted Party is not liable for damage or loss of any nature whatsoever that was caused by the Contracted Party's reliance on incorrect and/or incomplete information provided by the Client and/or information not provided in sufficient time.
- 6.11** Damage or loss within the meaning of paragraph 1 of this article must be reported to the Contracted Party in writing as soon as possible, but at the latest within four weeks after discovery. Damage or loss not reported to the Contracted Party in writing within that period does not qualify for compensation, unless the Client demonstrates that it was unable to report the damage or loss at an earlier time.
- 6.12** The limitations of the Contracted Party's liability included in these General Terms and Conditions do not apply if the damage or loss was caused by intent or gross negligence (in the meaning of wilful recklessness) of the Contracted Party or its management.

#### **Article 7. Non-disclosure**

- 7.1** The Client will only use the quotation submitted by the Contracted Party and related knowledge and ideas of the Contracted Party to evaluate its interest in granting the order. These provisions also apply to proposals for changes and additions to and/or extensions of the Agreement.
- 7.2** Either party will keep secret all confidential information obtained from the other party or from another source in the course of the Agreement. Information will be deemed to be confidential if the disclosing party has communicated its confidential nature or if such confidentiality ensues from the nature of the information.
- 7.3** The Contracted Party will not make the Results obtained from the performance of the Agreement available to third parties.
- 7.4** The obligations to observe secrecy, referred to in paragraphs 2, 3 and 6 of this article, do not apply to data or Results that:
- a. are of a general nature, i.e. that do not specifically pertain to the Client's own business operations and/or work;
  - b. were already in the Contracted Party's possession;

- c. are generally known and/or become generally known, without this being the result of any imputable acts or omissions of the Contracted Party;
- d. the Contracted Party obtained from a third party in a lawful manner or from its own research, without using data or results that are not accessible to third parties;
- e. have not been or will not be regarded as confidential in consultation with the Client;
- f. must be disclosed pursuant to the law or a regulation based thereon;
- g. are available to the public.

**7.5** The obligation to observe secrecy referred to in paragraphs 3 and 6 of this article does not apply:

- a. if and as a result of disclosure by the Client to third parties, the Contracted Party deems it necessary to provide an explanation to third parties;
- b. if secrecy is in violation of statutory regulations;
- c. if inspection is requested for internal or external audits to grant or extend accreditations of laboratory, inspection activities and/or of product and management system certification schedules;
- d. if there is a danger to people or objects.

If possible, consultation about the above will take place with the Client in advance.

**7.6** At the Client's request, the Contracted Party will keep secret the Client's name and the fact that the research has been conducted.

**7.7** In the case of the application of Article 7.5 (c), the Contracted Party stipulates that the auditors observe secrecy with respect to the data provided for inspection.

**7.8** In the case of application of the provisions of Article 4.13, third parties who are involved in the performance of the Agreement may be provided with data subject to secrecy. The Contracted Party stipulates that those third parties observe secrecy with respect to the data provided.

**7.9** The Client will observe secrecy with respect to the Contracted Party's corporate information whose confidentiality is established or should reasonably be known to the Client. The Client also imposes the obligation to observe secrecy on the members of staff or third parties engaged by it.

## **Article 8. Results**

**8.1** Within the scope of the business operations of its own company, the Client is entitled to the full and free use of the Results provided to the Client by the Contracted Party.

**8.2** The provisions of paragraph 1 of this article apply on the understanding that the intellectual and industrial property rights of the Results are at all times vested in the Contracted Party, except for third-party rights and with due observance of the provisions of Article 11.

**8.3** The Contracted Party is entitled to use or cause the use of the Results of the Agreement at no cost for its business operations or for third parties, in which respect the provisions of Article 7 regarding secrecy will be observed.

**8.4** The Contracted Party has the right to use, or allow others to use, the knowledge and experience obtained from the performance of the Agreement, calculation methods, software and experimental working methods resulting from the performance of the Agreement free of charge for its business operations or for the benefit of third parties, to the extent that the development thereof was not the purpose of the Order that was given.

**8.5** The Contracted Party will keep items, such as samples made available to the Contracted Party in connection with the Agreement or remainders thereof, for two weeks after the date on which all Results were communicated to the Client, unless such is reasonably impossible or if other arrangements were made upon granting the Order. The associated costs will be deemed to be included in the sum stated in the Offer. If the Client has not made an arrangement within this period for the returning of the items in question, the Contracted Party will be at liberty to destroy the items or the Contracted Party may take other measures at its own discretion with respect to the items in question. Costs involved in storage longer than described above will be payable by the Client.

## **Article 9. Ownership, disclosure and use of documents**

- 9.1** Reports etc. that were used for the Offer and/or for the performance of the Agreement and/or have been included in the result are and will remain the Contracted Party's property.
- 9.2** Without the Contracted Party's prior written consent, the Client will not be authorised, with respect to the Contracted Party's documents, such as reports etc.
- to disclose them or allow their inspection by third parties;
  - to use them or allow them to be used for instituting claims, conducting legal proceedings, or for recruitment purposes;
  - to use the Contracted Party's name in any connection when disclosing part or parts of a document issued by the Contracted Party or for the purposes referred to in b. above.
- 9.3** The provisions of paragraphs 2.a and 2.c of this article do not apply to quality surveys, test reports and inspection reports. Disclosure of these reports is permitted, provided they are disclosed in full, without any additions or omissions. Stipulations varying from these terms and conditions or publication in a language other than English require the Contracted Party's prior permission.
- 9.4** The Client will at all times be obliged to render all cooperation to the Contracted Party in order to give an explanation or provide comments, to third parties as well, if:
- the Client discloses Results in a manner that may give rise to an incorrect representation of the facts, misunderstandings, etc.;
  - the Client refers to the standards and requirements applied by the Contracted Party, such as inspection requirements, or
  - the Client does something else in the spirit of this article.

#### **Article 10. Patent**

The Contracted Party is not obliged to research patent rights of third parties. Neither will the Contracted Party be obliged to research the possibility of patenting.

#### **Article 11. Inventions and patents**

- 11.1** Only the Contracted Party is entitled to apply for a patent in respect of an invention, process or product in its name and at its expense.
- 11.2** The Client may only make a patent application contrary to the provisions of Article 11.1 after obtaining the prior written permission of the Contracted Party. In that case, the Client will grant the Contracted Party a licence for no consideration with respect to the use of the invention for its own purposes and those of third parties. The Client also reimburses the Contracted Party for the sum that the latter is obliged to pay the inventor pursuant to the law or employment conditions.
- 11.3** The Contracted Party and the Client will inform each other as soon as possible of results that are patentable in their opinion.
- 11.4** The Contracted Party and the Client will render each other all required cooperation, at a reasonable compensation of the costs, in the filing of patent applications in accordance with the provisions of this article.

#### **Article 12. Force majeure**

- 12.1** Force majeure on the Contracted Party's part is understood to mean: circumstances that prevent the fulfilment of the Agreement and for which the Contracted Party cannot be blamed, regardless of whether those circumstances were foreseeable when the Agreement was concluded. The obligations of the Contracted Party will be suspended during the period of force majeure.
- 12.2** The circumstances referred to in Article 12.1 include: war circumstances, fire and other destructions, business interruptions, strikes, government measures, a general lack of the items or services required to fulfil the agreed performance and non-foreseeable standstills at third parties on which the Contracted Party depends for the performance of the Agreement.
- 12.3** The Contracted Party is also entitled to rely upon force majeure if the circumstance that prevents fulfilment or continued performance takes effect after the date on which the Contracted Party should have fulfilled its obligations.

- 12.4** If the period in which fulfilment of the obligations by the Contracted Party is not possible due to force majeure lasts longer than one month, both parties will be entitled to terminate the Agreement without any obligation to pay compensation.
- 12.5** If force majeure occurs at a time when the Contracted Party had already partially fulfilled its obligations or can only partially fulfil its obligations, it will be entitled to separately invoice the part that has already been performed or the part to be performed, and the Client is then obliged to pay this invoice as if it concerned a separate order.  
This does not apply, however, if the part that has already been performed or the part to be performed does not have an independent value.

### **Article 13. Payment, retention of title, collection charges**

- 13.1** Payment must be made in Turkish Lira without deduction or set-off, within 8 days of the invoice date, unless agreed otherwise in writing. Any objections to the invoice, which must also be submitted within the stated period, do not suspend the Client's payment obligation.
- 13.2** If the Client does not pay within the stated period, the Client will be in default by operation of law (i.e. without any demand or notice of default being required). From the time of default, the Client owes interest equivalent to the statutory commercial interest plus 2% on the amount that is due and payable.
- 13.3** In the case of default, the Client is furthermore obliged to compensate the Contracted Party for all extrajudicial costs associated with the collection. The extrajudicial costs are set at 15%, at the minimum, of the part of the invoice amounts that has not been paid (including VAT), with a minimum of €75.
- 13.4** If the Client has instituted an action in legal proceedings, including arbitration proceedings or a binding opinion, the Client will be obliged to compensate the Contracted Party for the costs actually incurred in the proceedings in question. This includes the costs of lawyers, local counsels and representatives ad litem as well as the fees due to arbitrators or third parties charged with giving a binding opinion and court fees.
- 13.5** In the absence of payment in due time of any invoice, all outstanding invoices, even invoices whose payment term has not yet expired, will become immediately due and payable.
- 13.6** The Contracted Party can at all times send interim invoices and/or require advance payments and/or require that the Client provide appropriate security, at the Contracted Party's discretion.
- 13.7** Payments made by the Client will always first be used to pay all outstanding interest and costs and secondly to pay invoices due and payable which have been outstanding for the longest period of time, even if the Client states that the payment concerns a later invoice.
- 13.8** With respect to payments and settlements, the Contracted Party's records will be binding at all times.
- 13.9** The Client will not be entitled to suspend any payment obligation vis-à-vis the Contracted Party.
- 13.10** All items delivered and to be delivered will remain the Contracted Party's exclusive property until all claims that the Contracted Party has or may acquire against the Client, have been paid in full. The Contracted Party is entitled to repossess the items that have remained its property if the Client fails to fulfil any obligation pursuant to the Agreement concluded with the Contracted Party, without prejudice to the Contracted Party's authority to demand termination or fulfilment of the Agreement. The Client is obliged to give the Contracted Party the opportunity to repossess the items. Notwithstanding the provisions of Article 18.2 of these General Terms and Conditions, the property-law consequences of the retention of title will be governed by the law of the country in whose territory the items are located at the time of delivery, unless it concerns items destined for export. In the case of items destined for export, the property-law consequences of this retention of title will be governed by the law of the country of destination if pursuant to that law the retention of title does not lose its effect until the full price has been paid.

### **Article 14. End of the Agreement**

- 14.1** The date of the Contracted Party's final invoice is regarded as the date of termination of the Agreement, unless agreed otherwise.
- 14.2** If there is no such invoice, the Contracted Party will determine the date on which the Agreement can reasonably be deemed to have been terminated.

#### **Article 15. Termination, interruption or extension of the order**

- 15.1** The Client will compensate the Contracted Party for all costs and damage or loss resulting from the Client's termination, cancellation or interruption of an Agreement, without prejudice to the Contracted Party's right to take legal action.
- 15.2** If the order is cancelled, the Contracted Party will charge the Client cancellation costs if the cancellation:
- takes place less than two weeks but more than one week prior to the start of the performance of the Agreement: 60% of the Order Sum;
  - takes place less than one week prior to the start of the performance of the Agreement: 90% of the Order Sum.
- 15.3** In any case, the Contracted Party will be entitled to terminate the Agreement if an interruption by the Client lasts longer than three months, without being obliged to pay the Client any compensation. The effective date of an interruption is the date of the letter from the Client or Contracted Party in which the interruption is announced or, in the absence thereof, the date of the letter showing the interruption.
- 15.4** In the case of a delay or extension of the work involved in the Agreement, the Contracted Party may charge additional costs if the delay or extension cannot be attributed to the Contracted Party.

#### **Article 16. Termination**

- 16.1** Without prejudice to the provisions of the previous articles, the Client will be deemed to be in default by operation of law if it fails to fulfil, or fails to do so properly or in a timely fashion, any obligation that arises for it from the Agreement, as well as in the case of its insolvency, suspension of payments, winding-up or an administration or guardianship order. In that case and without any notice of default or judicial intervention being required, the Contracted Party will be entitled to suspend performance of the Agreement with immediate effect or to terminate the Agreement wholly or partially, at the Contracted Party's discretion, without the Contracted Party being obliged to pay any compensation, but without prejudice to its right to compensation of the damage or loss that results from the breach of contract and the suspension or termination. In those cases, every claim by the Contracted Party against the Client will be due and payable immediately and in one lump sum.
- 16.2** The provisions of paragraph 1 of this article do not apply with respect to the right to termination if on account of the special nature or minor importance of the failure it does not justify termination and its consequences.

#### **Article 17. Miscellaneous**

- 17.1** At the Contracted Party's request and in the case of work associated with the order at the Client's site and/or installations, the Client will make the necessary facilities, such as auxiliary staff and auxiliary plant and equipment, available to the Contracted Party free of charge.
- 17.2** The Client is not authorised to fully or partially transfer the rights and obligations arising from the Agreement or resulting Agreements to third parties.
- 17.3** The party that, in spite of the recruitment ban, employs employees of the other party will be obliged to take over any obligations that the Contracted Party assumed for the benefit of the employee concerned.

#### **Article 18. Disputes, applicable law**

- 18.1** In derogation from the statutory rules that apply to the jurisdiction of the civil court, any dispute between the Client and the Contracted Party will be settled by the District Court and Execution Offices of İstanbul (Çağlayan) / Turkey.





**18.2 Turkish** law applies exclusively to every agreement concluded with the Contracted Party.

**Article 19. Translations**

In the case of any differences between these General Terms and Conditions and translations thereof, the English text will prevail.

**Article 20. Entry into force**

These General Terms and Conditions enter into effect on December 08, 2014.