

GENERAL TERMS AND CONDITIONS OF NIZO food research B.V.
Filed at the Chamber of Commerce and Industry at Arnhem on June 8, 2023
and updated on November 14, 2023
All earlier General Terms and Conditions are thereby revoked.

Article 1. DEFINITIONS

In these General Terms and Conditions the following terms shall have the following meaning:

- o **Background:** any Information gathered, developed, produced or generated prior to the execution of the Agreement by Parties or any Information independently developed by any Party during the execution of the Project.
- o **Conditions:** these General Terms and Conditions.
- o **Agreement:** every agreement or order and/or related (legal) acts between NIZO and Customer, as well as every Proposal, invitation, quotation, inquiry and/or advice to which NIZO and/or Customer are a party.
- o **Customer:** a party engaging NIZO to provide Services and/or Products.
- o **Foreground:** any Information that is developed, discovered, conceived or created in connection with the Agreement, explicitly excluding any developed methods.
- o **Information:** any products, ideas, inventions, discoveries, formats, technology, technical information, know-how, knowledge, methods, processes, procedures, instructions, specifications, strains, cultures, samples, models, prototypes, apparatuses, materials, drawings, designs, photographs, software, hardware, moulds, tools, recipes, reports, papers and any other technical and/or commercial and financial information, advice, (test) data and documents of any kind regardless of its method of disclosure.
- o **IP Rights:** all intellectual property rights, including but not limited to patents, copyrights, design rights, model rights, database rights, trade names, trademarks, service marks, domain names, rights in confidential information and the goodwill pertaining thereto, whether or not such rights can be registered or not, as well as any registrations, applications, divisions, continuations, reexaminations, renewals or reissues of any of the foregoing.
- o **NIZO:** NIZO food research B.V. with address at Kernhemseweg 2, 6718 ZB, Ede, the Netherlands.
- o **Party/Parties:** respectively NIZO and/or Customer.
- o **Products:** all products, cultures, strains or software as specified in the Agreement.
- o **Project:** specific activities undertaken by NIZO on behalf and for Customer as described in the Agreement.
- o **Proposal:** any written offer to Customer for Products or Services by NIZO including a Project plan in which, among others, the activities, scope of work, the investments, time schedule, (intermediary) decisions, Price and – if possible – the expected Results are described.
- o **Price:** the price as agreed between the Parties.
- o **Raw data:** all data generated by NIZO during the execution of the Agreement.
- o **Report:** written document describing the activities performed or partly performed by NIZO including any Results.
- o **Results:** the deliverables specified in the Agreement and described in a Report, excluding Raw data.
- o **Services:** production activities and/or advice, execution of research, provision of data, developments and/or similar activities

Article 2. APPLICABILITY

- 2.1. These Conditions apply to all Proposals, Agreements and sale and delivery of Products or Services to Customer.
- 2.2. NIZO hereby expressly rejects the applicability of any general terms and conditions of Customer.
- 2.3. Any deviations from these Conditions must be agreed upon in writing by both Parties.

Article 3. PROPOSAL AND CONFIRMATION

- 3.1. Until a Proposal is signed by the Customer, all Proposals issued by NIZO are revocable and subject to change without notice, irrespective of whether an acceptance period applies to the Proposal
- 3.2. An Agreement comes into force if NIZO has received a written acceptance by Customer. After the Agreement comes into force,

- changes may only be made in writing upon mutual approval of both Parties.
- 3.3. NIZO shall exercise its best reasonable efforts, given the nature of the Products or Services, to achieve the Results as described in the Proposal but shall not warrant any outcome.
 - 3.4. Customer shall as soon as possible after the Agreement comes into force, make available to NIZO free of charge all information, samples, (raw) materials, data and instruments required, in the reasonable opinion of NIZO, to produce the Products or perform the Services.
 - 3.5. The execution of the Services shall be concluded by a written Report describing the Results and conclusions from the Services.
 - 3.6. NIZO shall retain unrestricted proprietary rights and copyrights to the Proposal, the Project plan, specifications and other documents used herewith, which shall be subject to the confidentiality provisions of Article 8 (Confidentiality).
 - 3.7. If NIZO is engaged to provide services together with another person or legal entity, NIZO will only be liable for the performance of those obligations that are explicitly NIZO's obligations. Article 7:407(2) of the Dutch Civil Code will not apply.
 - 3.8. Project timelines are dependent on compliance from Customer to deliver ingredients / samples / materials on time. Failure to deliver required items on time will be handled as a project delay.
- Article 4. **PRICE AND PAYMENT**
- 4.1. In case Parties agree on a "fixed price" in the Agreement, this shall be the Price for the Project. If a Project is changed, amended or expanded for any reason whatsoever, NIZO will inform the Customer of the consequences to the scope, timings and Price due to the change, amendment or expansion. Parties must agree within 5 working days, or sooner if reasonably required by the Project, on a way forward. In case Parties cannot agree, NIZO has the right to stop all work and dissolve the Agreement and NIZO is allowed to invoice the Customer for the additional costs incurred on the basis of subsequent calculation and the Customer is obliged to pay these additional costs.
 - 4.2. Unless a fixed price is agreed in accordance with Article 4.1 in the Agreement, the indicated price for the Products or Services shall be seen as a non-binding indication and shall be determined and invoiced, including the expenses incurred by NIZO in consultation with the Customer, on the basis of subsequent calculation done on a monthly basis.
 - 4.3. NIZO shall be entitled to increase the price of the Products or Services still to be delivered, including increasing a stated fixed price as mentioned in article 4.1, if the cost price determining factors, including - but not limited to - an increase in raw and auxiliary material prices, increase in prices of third party services, and/or other objective circumstances, have been subject to an increase. The Price may be increased with a maximum of 10% without prior approval of Customer. NIZO shall notify Customer of any such increase in writing as soon as possible, but ultimately before the effective date of any such increase. If the Customer does not agree to such Price change, the Customer may initiate negotiations with NIZO within two calendar weeks after having received the adapted Price, in order to change the Project Plan; however, parties agree that such a price increase shall not entitle the Customer to dissolve the Agreement.
 - 4.4. The Price shall be exclusive of any taxes, duties, levies and / or any other surcharges, all of which shall be for the account of Customer. An invoicing scheme shall be included in a Proposal or Agreement.
 - 4.5. Unless explicitly agreed otherwise, payment shall be made within 14 days of the invoice date in the manner stipulated in the invoice. NIZO shall be entitled at all times to demand full or partial advance payment and/or to otherwise require security for payment. Customer shall pay all invoices of and sums due to NIZO in full without any deduction, withholding, counterclaim or set-off of any nature whatsoever.
 - 4.6. If Customer fails to remit any payment due, all amounts owed by Customer to NIZO shall immediately become due and payable, and Customer shall be in default without notice of default being required to be given.
 - 4.7. NIZO reserves the right to invoice costs incurred due to unoccupied resources to a

maximum of 100% of the hours cost for 4 weeks execution in case of project delays occurring from non-compliance of Customer (i.e. samples / ingredients / information not delivered in time).

- 4.8. Costs for travel and subsistence outside the Netherlands are not included and will be invoiced separately on occurrence.

Article 5. **DELIVERY, ACCEPTANCE AND CLAIMS**

- 5.1. Supply and/or delivery of Products, or surplus ingredients handled by NIZO according to a Proposal, shall be EXW NIZO, Ede, the Netherlands (Incoterms 2020). Costs and charges of transport, packaging and disposal of (hazardous) waste and residues, as well as any insurances or any other costs related thereto, shall be at the expense of Customer.
- 5.2. Any times or dates for the Products or Services by NIZO are estimates and shall not be of the essence. In no event shall NIZO be liable for any delay of the Products or Services. Delay in delivery of Products or Services shall not relieve Customer of its obligation to accept delivery thereof, unless it cannot reasonably be expected to accept such late delivery. Customer will take care of the timely delivery of all required ingredients for the Products, free of costs and charges, DDP at the address of NIZO (Incoterms 2020). Specifications for the ingredients need to be supplied, e.g. CoA stating Food-grade status. Please note that due to strict Quality Assurance policies as well as Food safety requirements, NIZO cannot accept ingredients / samples / materials which do not comply with the agreed specifications
- 5.3. Quality and shelf-life data as well as other data only constitute a guarantee if explicitly agreed and designated as such in writing between the Parties.
- 5.4. On delivery, Customer shall examine the conformity of the Products or Services with the specifications in the Agreement. All claims by Customer must be made in writing and received by NIZO within 5 (five) business days after Customer's receipt of the Products or Services. No claims shall in any event be made against NIZO after the Products or Services have been resold, used, processed or treated in any form or in case the Products concerned have been transported, handled,

used, processed or stored by or for Customer incorrectly or contrary to any instructions given by or on behalf of NIZO.

- 5.5. Claims concerning defects that could not be discovered within the above time limit despite accurate inspection of the Products or Services must be made in writing and received by NIZO within 5 business days from discovery of the defects, and, in any event, not later than 90 days after Customer's receipt of the Products or Services. Failure of Customer to give notice of any claim within the applicable time period specified above shall be deemed an absolute and unconditional waiver of such claim.
- 5.6. In case of a justified and timely claim relating to a defective Product, the sole remedy available to Customer shall be the replacement of the Product by NIZO at no charge to Customer, or the crediting by NIZO to Customer of the Price paid by Customer for the defective Products. In case of a justified and timely claim relating to defective or non-conforming Services, the sole remedy available to Customer shall be to have such Services corrected or re-performed by NIZO, or the crediting by NIZO to Customer of the Price paid by Customer for the defective or non-conforming Services. Parties shall decide and agree on one of the aforementioned remedies in writing.

Article 6. **TRANSFER OF TITLE AND RISK**

- 6.1. The risk in the purchased Products shall transfer to Customer at the time at which NIZO offers the Products for delivery.
- 6.2. Title to the Products delivered to Customer shall not pass from NIZO to Customer unless and until Customer has fulfilled all and any payment obligations that it may have towards NIZO, howsoever arising.

Article 7. **WARRANTY, LIABILITY, INDEMNIFICATION**

- 7.1. NIZO solely warrants that (i) it possesses skills, experience, knowledge, personnel and facilities necessary to fulfil its obligations under the Agreement and (ii) the Products or Services shall be in conformity with NIZO's specifications in effect on the date of delivery of the Services or shipment of the Products. Furthermore, NIZO does not warrant the completeness of the search for (patent)

- literature it carries out in conjunction with a Proposal or Services.
- 7.2. NIZO is only liable for damages which are the result of an attributable shortcoming of NIZO in the execution of its obligations under the Agreement. In all cases in which NIZO is obliged to pay damages, NIZO's liability is limited to the amount that is paid out for the relevant claim under NIZO's insurance. Liability for damage caused by an event not covered by any insurance is at all times limited to EUR 500,000.
- 7.3. NIZO shall in no event be liable for any loss of income or profits, loss of business or clients, loss of goodwill, loss of use, increased cost of working, penalties, fines, and, punitive damages, damage resulting from late delivery, damage to reputation, or any special, indirect or consequential damages or losses arising out of or in connection with any Agreement.
- 7.4. NIZO shall not be liable for any damages or loss of Customer:
- that arise from Results that are not eligible for protection by the IP Rights, or because the (use of the) Results or the application thereof infringe the IP Rights or license rights of any third parties;
 - as a result of application or use of the outcome of the Agreement, other than in the event of willful intent or gross negligence on the part of NIZO;
 - that arise during the stay of Customer or his employees on the premises of NIZO.
- 7.5. Every compensation claim in connection with the Proposal or Agreement will expire if NIZO has not been notified of such a claim in writing within one year after the final written report of NIZO has been finalized.
- 7.6. The limitations described herein shall not apply in case of gross negligence or wilful misconduct of NIZO. Customer shall indemnify and hold NIZO harmless from and against all damage, losses, costs, expenses, claims, demands and liabilities arising out of or in connection with the Products or Services executed by NIZO, Customer's use thereof and/or Customer's use or application of any Information disclosed or provided by or on behalf of NIZO.

Article 8. CONFIDENTIALITY

- 8.1. Parties shall keep secret and confidential any and all information relating to or relevant in connection with a Proposal or Agreement received by the receiving Party or any of its affiliates, directly or indirectly, from the disclosing Party in writing, electronically, visually, orally or in any other form, including any information concerning the disclosing Party, its affiliates, or their respective businesses, customers and suppliers and being marked as "confidential" ("Confidential Information") for the duration of the Agreement and three (3) years after the final written Report of NIZO has been sent to the Customer. Confidential Information that constitutes a trade secret shall only be disclosed to NIZO on a strict "must know" basis upon prior written approval of NIZO. The confidentiality obligations regarding trade secret shall continue until NIZO can demonstrate the information no longer constitutes a trade secret.
- 8.2. The obligation of secrecy described in Article 8.1 is not applicable to Confidential Information that:
- can be obtained from publicly available sources or is generally known to the public, provided that such is not the result of any violation by the receiving Party or any of its affiliates of any terms and conditions set forth in these Conditions; or
 - is available to the receiving Party or its affiliates on a non-confidential basis from a source other than the disclosing Party or its affiliates or external advisors, unless the receiving Party or its relevant affiliate knows or should reasonably have known that the information was obtained unlawfully by such other source; or
 - is independently acquired or developed by the receiving Party or any of its affiliates, without violating any of the obligations pursuant to these Conditions.

Article 9. INTELLECTUAL PROPERTY RIGHTS BACKGROUND

- 9.1. All Background which is owned by, or is proprietary to, a Party shall remain vested exclusively with that Party.
- 9.2. NIZO shall have the right to use the Background of Customer as far as necessary for the performance of the Agreement.

9.3. Customer may only use the Background of NIZO subject to prior, express written approval of NIZO.

FOREGROUND

9.4. All rights, title and interest in and to (parts of) Foreground and respective IP Rights created and/or developed during the execution of the Agreement will, upon payment in full of the Price, vest exclusively and unconditionally in Customer unless stipulated otherwise in the Agreement and/or these Conditions.

9.5. The IP Rights, or the exclusive right to vest them, with regard to methods, software and experimental working methods developed by NIZO, the development of which was not directly intended with the award of the contract, accrue in full to NIZO and will become NIZO Background, and will not be part of the Foreground, unless provided otherwise by contract (which will also lay down the specific terms and conditions under which the right will be transferred to Customer).

9.6. In so far as necessary, NIZO shall execute any document in connection with any transfer of Foreground to Customer and/or undertake any other action reasonably required to transfer Foreground to Customer, upon Customer's reasonable request and at his own cost.

9.7. If NIZO or any of its affiliates obtain the services of a third party for any part of the Agreement, NIZO shall use its reasonable efforts to ensure that the agreement with such third party contains clauses pursuant to which NIZO shall become the owner of any Foreground ensuing from the activities performed by the third party.

9.8. Customer has the exclusive right to seek and apply for protection of any and all Foreground at its own costs in countries of its own choice.

9.9. Copyrights to the preliminary, intermediary or final Report or subsequent explanatory notes to the final Report, shall always exclusively vest in NIZO.

9.10. The Customer will have the right to use the part of the Foreground accrued to NIZO – as provided to the Customer by delivery of the Report – within the Scope of the Agreement, except with regard to any incorporated Background of NIZO and

subject to other limitations as laid down in these Conditions and the Agreement.

9.11. In case NIZO uses bacterial strains from the NIZO Culture Collection for the execution of the Services and the Customer wishes to obtain a right to use these bacterial strains, this shall be agreed explicitly in an Agreement. At all times NIZO shall remain the sole owner of such bacterial strains.

9.12. Both during and after the period during which NIZO, pursuant to Article 8.1, is obliged to confidentiality, NIZO has the right to use for itself and third parties, or put at the disposal of third parties:

- a. Confidential Information owned by NIZO at the start of the Agreement;
- b. outcome of the Services outside the scope of the Results as described in the Agreement.

9.13. Customer is not allowed to use Results from and Reports of Services done by NIZO (i) for submitting a claim for damages against third parties, (ii) for starting legal proceedings and the preparatory actions connected with such claims and (iii) for advertising nor (iv) to use the name of NIZO in any connection, without explicit prior written approval from NIZO.

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

DATA AND REPORTS

9.15. On request of the Customer NIZO will provide an electronic version of confidential reports through internet and / or E-mail. NIZO is not responsible for loss and / or abuse by third parties of this electronic information. The content of the (electronic) reports is subject to copyright. The content of these reports may not be changed without the explicit consent of NIZO.

9.16. In case preliminary results will be provided, these are for information purposes only and may contain forward-looking statements, which are based on current expectations. Accordingly, no assurance can be given, that the final results will not be materially different from the anticipated results described in the

preliminary results. Consequently, NIZO makes no warranties, either expressed or implied, concerning the accuracy, completeness, reliability, or suitability of such preliminary information.

Article 10. **TERMINATION**

- 10.1. NIZO shall be entitled to suspend the execution of an Agreement, or to terminate an Agreement (whether in full or in part, and whilst retaining all of its rights to compensation for costs and damages) with immediate effect on written notice, if:
- a. Customer fails to meet one or more of its obligations;
 - b. Customer commits any serious misconduct, or any intentional, negligent or tortuous act;
 - c. if NIZO has reasonable doubts with respect to Customer's performance of its obligations to NIZO and Customer fails to provide to NIZO adequate assurance of Customer's performance before the date of scheduled delivery of the Products or Services and in any case within thirty (30) days of
 - d. NIZO's demand for such assurance; or
 - e. Customer is declared bankrupt, or (provisional) suspension of payment is requested, if its business is liquidated or discontinued or it is otherwise insolvent,
 - f. if an exemption or permit necessary for the execution of the Agreement is revoked.
- 10.2. In any such event of Article 10.1:
- a. NIZO may by notice in writing forthwith demand return and take repossession of any delivered Products which have not been paid for, for which purpose Customer hereby grants an irrevocable right to NIZO to enter upon all or any of the premises where the Products are or may be located and all costs relating to the recovery of the Products shall be for the account of Customer;
 - b. all outstanding claims of NIZO shall become due and payable immediately with respect to the Products or Services delivered to Customer and not repossessed by NIZO.
- 10.3. If and when terminated in accordance with the foregoing provisions, Customer shall not

have any claims against NIZO as a consequence of such termination.

Article 11. **DATA PROTECTION**

- 11.1. NIZO may collect and process, by computer or otherwise, any information, including personal data relating to Customer or its employees (jointly: "Data") for the purpose of conclusion or performance of the Agreement or other agreements between NIZO and Customer. Customer also agrees that NIZO may, as far as is permitted by applicable laws, disclose this Data to third parties to enable NIZO to carry out statistical analysis. NIZO may disclose Data in connection with the Agreement to any person or entity to whom NIZO assigns its rights under such assignment or advisors for the purpose of advising on or assisting in such assignment.

Article 12. **FORCE MAJEURE**

- 12.1. Either Party shall be entitled to invoke force majeure if the implementation of a Agreement, in whole or in part, temporarily or not, should be delayed or impeded by circumstances reasonably outside such Party's control (a "Force Majeure Event"), including, but not limited to, trade embargoes, strikes, civil commotion, terrorism, acts of God such as lightning strikes, work-to-rule and lockouts, global health emergency, lack of raw materials, delayed deliveries to such party by third parties of ordered goods or services in circumstances other than can be imputed to such party, accidents, breakdowns, animal diseases, unforeseeable problems with production or transport, devaluation, increasing of levies or taxes of whatever nature, significant change of prices of raw materials or energy, and lapse, withdrawal or non-extension of the required permits, certificates, licenses and such like.
- 12.2. In the case of a Force Majeure Event on the part of either Party, this party shall promptly notify the other party of such Force Majeure Event in writing and the obligations of that Party shall be, to the extent that it is so prevented or impeded, suspended without liability for breach or non-performance. The reciprocal obligations of the other Party

shall also be suspended without liability for breach or non-performance.

- 12.3. If a Force Majeure Event affecting a Party can reasonably be expected to continue in excess of three months, or has already lasted for a period of three months, the other party may terminate the Agreement on written notice to the affected Party with immediate effect, without thereby creating any rights to compensation.

Article 13. **MISCELLANEOUS**

- 13.1. Customer shall not assign any Agreement without the prior written consent of NIZO. Reorganization, merger, share exchange, consolidation, or sale or disposition of all or substantially all of the assets of Customer shall constitute a change of control situation for which the prior written consent of NIZO is required.
- 13.2. NIZO shall be entitled to subcontract the obligations it is to perform in terms of any Agreement.
- 13.3. NIZO will keep Raw data generated during the execution of the Agreement for a maximum period of one (1) year after termination of the Agreement.
- 13.4. These Conditions have been drawn up in the English language. All Notices and other documents in terms of any Agreements and these Conditions shall be in the English language, unless otherwise agreed by NIZO in writing. Any translations into other languages of these Conditions shall be for purposes of convenience only.
- 13.5. If one or more of the provisions of these Conditions should be held to be invalid or ineffective by a competent court of law, the remaining provisions shall continue in full force and effect.
- 13.6. All notices, requests, demands, waivers, consents, approvals and/or other communications (collectively, "Notices") required in terms hereof to be given in writing, may also be given electronically (i.e. by e-mail), with the exception of (a) any Notices to be given in terms of Article 10 (Termination) above, which shall be given and made in writing by registered mail.

Article 14. **SAFETY:**

- 14.1. NIZO highly values the safety and health of its employees. Therefore, NIZO will only

work with biological materials if the work is in accordance with the biological safety policy at NIZO (available on request). Adequate information about the origin and characteristics of biological material is therefore of crucial importance for NIZO. NIZO will perform a risk assessment based on the available information. If during project definition or execution thereof, new information becomes available that contrasts with the safety policy of NIZO and poses an unacceptable risk to the employees of NIZO, NIZO will have the right to withdraw from or change the procedures of the proposed activities related to the biological material. This may impact on the project plan (activities, deliverable, budget, and timing).

- 14.2. If the goods are made available to NIZO for the performance of research can potentially be dangerous, in any way whatsoever, the Customer 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 NIZO must handle them with care.
- 14.3. NIZO complies with EU-food-legislation and is keen on keeping its employees safe. In case a customer wishes NIZO to produce a product in NIZO's food grade facilities, NIZO will first check whether the involved ingredients and process are admissible to the facilities. If so, NIZO will generate the product and label it either as 'suitable for consumption' or 'for research only', according to EU-legislation. The former category involves foods used to a significant degree for human consumption in the EU before 15th May 1997, EFSA approved novel foods and EFSA approved traditional foods from third countries, while the latter involves all other products. Products that are labelled 'for research only' will therefore not be offered to NIZO's sensory panel.

Article 15. **CONVENTION ON BIOLOGICAL DIVERSITY:**

- 15.1. Nagoya Protocol restrictions may apply to the genetic resource(s) supplied by the Customer to NIZO as described in the Proposal. In such case, the Customer warrants that it is in full compliance with the

Convention on Biological Diversity and associated national access legislation for these resource(s). Upon request of NIZO, the Customer shall provide the relevant access and benefit sharing documentation to NIZO. If there are no Nagoya Protocol restrictions, NIZO may ask the Customer for documentation that states information on the origin of the genetic resource(s).

Article 16. **NON-SOLLICITATION**

- 16.1. Customer shall not, at any time during the Agreement and for a period of two (2) years thereafter, solicit direct or indirectly- any employee of NIZO to leave the employment of NIZO or to accept any other employment or position at Customer or its affiliates,
- 16.2. In the event of a violation by Customer of the provision 16.1, Customer shall owe NIZO an immediately payable, non-mitigating compensation. This compensation is the last applicable annual gross salary for the employee concerned.

Article 17. **GOVERNING LAW AND JURISDICTION**

- 17.1. These Conditions shall be governed, interpreted and enforced according to Dutch law.
- 17.2. Disputes between NIZO and Customer that cannot be solved by mutual agreement, shall be brought exclusively before the competent Court at Arnhem, The Netherlands.

Article 18. **LANGUAGE AND AMENDMENTS**

- 18.1. In case of translations of these Conditions, the English version will prevail over any other language.
- 18.2. NIZO is authorized to make changes to these General Terms and Conditions. These amendments will come into force at the stated time of entry into force. NIZO will send the amended General Terms and Conditions to the Customer in a timely manner. If no time of entry into force has been stated, amendments will come into force for the Customer as soon as the Customer has been notified of the amendment.