



## GENERAL CONDITIONS SGS NEDERLAND B.V. WITH B2B CLIENTS

### 1. Scope of application and binding force of the General Conditions

1.1. Assignments and orders for works, services and supplies (hereinafter the "Assignments") shall be accepted and carried out by SGS Nederland B.V. (hereinafter the "Supplier") only on the basis of an agreement concluded under these general conditions ("General Conditions"), unless there is an explicit deviation from these by means of a written agreement with the Supplier. If the parties explicitly deviate from these General Conditions or part thereof in writing for one or more specific Assignments, these General Conditions shall remain in force between the parties for the remaining provisions and for previous or subsequent quotations, Assignments and agreements.

1.2. These General Conditions shall be deemed to have been acknowledged and accepted by every company that grants Assignments to the Supplier (hereinafter referred to as the "Client"), with rejection of his own general conditions. Without prejudice to Article 1.4, these General Conditions shall be deemed to govern all relations between the parties, not only with regard to the Assignment for which the General Conditions are communicated, but also with regard to all subsequent quotations, Assignments and agreements.

1.3. These General Conditions apply to all services assigned to the Supplier and accepted by the latter, including, but not limited to, activities such as inspection, analysis, verification and related services and products, and the documents relating thereto drawn up by the Supplier as a result of his activities, regardless of the name of the record, report, certificate, attestation, etc. (hereinafter the "Record").

1.4. Without prejudice to Articles 1.1 to 1.3 inclusive, the Supplier and the Client may agree special conditions that more specifically determine the services assigned to the Supplier and supplement these General Conditions (hereinafter the "Special Conditions"). If any provision of these General Conditions conflicts with any provision of the Special Conditions, the provision of the Special Conditions shall prevail.

1.5. All restrictions on the content of the obligations or on the liability of the Supplier are also stipulated for the benefit of the bodies, employees, agents and subcontractors of the Supplier and the other legal entities of the same group.

### 2. Scope of the Assignment

The acceptance of an Assignment by the Supplier shall exclusively bind the Supplier to that Assignment, and shall not bind him to accept subsequent Assignments or to execute subsequent Assignments subject to the same General and/or Special Conditions (including the price), unless the Special Conditions of the earlier agreement explicitly provide otherwise.

### 3. Content and terms of the Supplier's commitment

#### 3.1. *Applicable specifications*

The Supplier shall perform the work with all reasonable care and skill and in accordance with the agreed Assignment and/or the specific instructions agreed between the Client and the Supplier. In the absence of such instructions, the Supplier shall act in accordance with (i) the relevant trade custom, usage or practices; and/or (ii) the methods which the Supplier deems suitable on the basis of technical, operational and/or financial motives.

#### 3.2. *Documents*

Documents that the Supplier receives regarding the legal relationship between the Client and third parties, or other documents of third parties, such as (copies of) purchase or work contracts, letters of credit, transport documents, etc., are only considered as information, without extending or limiting the scope of the services or obligations as agreed between the Client and the Supplier or as determined in accordance with Article 3.1. above.

#### 3.3. *Outsourcing of Assignments*

The Supplier is authorised, whether at the Client's request or not, to conclude an agreement with a third party at the Client's expense for the execution of the Assignment.

#### 3.4. *Suspension of execution*

The obligations of the Supplier will be automatically suspended for as long as the Client fails to fulfil the obligations pursuant to Article 4. They may also be suspended without notice of default if the Client is in arrears in payment to the Supplier, regardless of whether this payment relates to the same or another Assignment, or fails to fulfil any other obligation towards the Supplier.

If the Client becomes subject to seizure or insolvency proceedings, including a request for a judicial reorganisation procedure, or ceases its business activities, the Supplier may make the execution of the Assignment subject to prior payment of the price and costs, even for the Assignments for which an agreement has already been concluded and that does not provide for this.

This suspension may not only mean that no new services will be provided, but also that the permission for the use of goods, data or Records made available by the Supplier will be suspended.

#### 3.5. *Storage of samples*

The Supplier shall not be obliged to store samples, unless this has been expressly agreed, and then only during the agreed period. In the absence of such an agreed storage period, the Supplier shall be entitled to destroy the samples, or have them destroyed.

#### 3.6. *Content and scope of the Records*

The Records will be drawn up on the basis of (i) the Supplier's models and (ii) the facts, circumstances, documents and/or samples supplied by or in the name of the Client or reasonably determined by the Supplier at the time of the intervention and (iii) within the agreed limits set by Article 3.1. The Supplier shall not be obliged to refer to or record on any facts or circumstances that fall outside the agreed Assignment. Any update of a Record does not form part of the Assignment and assumes that an additional Assignment has been agreed to that end.

The Records that are drawn up as a result of the analysis of samples only contain the Supplier's opinion of these samples and not of the batch from which these samples originate.

If the Supplier witnesses an analysis of samples at the premises of the Client or of a third party, the Assignment of the Supplier is limited to confirmation that the sample in question has been analysed, and the Assignment does not extend to, among other things, the accuracy of the analyses, the results or the equipment used.

The Supplier shall not be liable to the Client or to third parties for any inaccuracies in the communications or Records that are caused by the inaccuracy, the lack of clarity or the misleading nature of the information provided to the Supplier.

#### 3.7. *Use of the Records by the Client*

Unless otherwise agreed in writing, the Records are always exclusively addressed to the Client himself and are not addressed to third parties. It is solely the Client's own responsibility to decide whether or not any action may or must be taken on account of the findings made.

If the Client brings a Record to the attention of a third party, this must always be presented in its entirety and only be presented in the context thereof, and it may not be presented as a statement by the Supplier to that third party.

The Supplier is neither liable to the Client nor to third parties for the actions taken or omitted by the Client or by third parties on the basis of the Records.

### **3.8. Scope of the obligation of the Supplier**

The Supplier's obligation to perform the services is a best-efforts obligation, and is limited by the restrictions specific to the subject matter of the Assignment, the restrictions imposed by an authority that can reasonably be assumed to be so empowered and the restrictions resulting from an event beyond the Supplier's reasonable control. The Supplier can therefore not be held liable for the total or partial non-execution of its Assignment as a result of any of these restrictions or events including the Client's failure to comply with his own obligations under the agreement (these General Conditions included).

The Supplier does not act as an insurer, nor as a guarantor with regard to characteristics of the products, services, data, processes or activities of the Client to which the services relate.

### **3.9. Transfer of risk**

If the agreement includes a delivery of goods by the Supplier, the storage of those goods pending delivery or collection shall be at Client's risk. The risk relating to those goods will pass to the Client Ex Works (Incoterms 2020), irrespective of whether or not ownership is retained.

### **3.10. Limitation of liability**

Without prejudice to the provisions of mandatory law and public order, the liability of the Supplier - also for indemnity claims - for any breach or negligence whatsoever, is limited to the damage that the Client proves (i) was directly caused by breach or negligence on the part of the Supplier in the performance of his obligations as determined in the agreement, (ii) constitutes gross negligence or gross misconduct and (iii) is a direct consequence of such gross negligence or gross misconduct, to the exclusion of indirect loss, loss of profits or consequential damage. Furthermore, this liability is limited per Assignment to ten (10) times the amount invoiced for the execution of the Assignment, with a maximum of thirty thousand (30.000,00) euros.

### **3.11. Forfeiture of rights**

The Client may only hold the Supplier liable for non-performance or defective performance of the Assignment if the Client submits a written and substantiated complaint

- (a) within thirty (30) days after the non-performance or defective performance was discovered or could reasonably have been discovered, and
- (b) within three (3) months after (i) the date of the execution of the Assignment giving rise to the complaint; or (ii) the date on which the Assignment should have been executed, in the case of an alleged non-execution.

Both terms apply cumulatively.

### **3.12. Limitation period**

Any action of the Client against the Supplier will be time-barred one (1) year after the fact on which the claim is based. If a complaint was submitted in good time in accordance with Article 3.11, this period will run from the date on which the complaint was sent.

## **4. Obligations of the Client in connection with the execution of the Assignment**

### **4.1. Information obligation for the execution of the Assignment**

The Client must provide the Supplier with full and clear instructions and communications regarding the Assignment in a timely manner and in writing. The Client shall ensure that the Supplier is provided with correct and complete instructions and communications. The Client shall inform the Supplier in advance of all known, actual or potential hazards in connection with an Assignment or the samples or tests, including for example the risk of radiation, toxic, harmful or explosive elements or materials, environmental pollution or poison.

### **4.2. Permits**

The Client must ensure that the Supplier obtains all permits necessary for the execution of the Assignment, including those for access to the locations, with the exception of the permits that the Supplier is deemed to have at his disposal by virtue of his activities.

### **4.3. Obstacles or interruptions**

The Client must take all necessary steps to prevent or remedy obstacles to, or interruptions in the performance of the Assignment.

### **4.4. Measures and facilities**

The Client will take all measures and provide the Supplier's employees with all the necessary facilities, so that they can carry out their Assignments properly, responsibly and safely.

### **4.5. Special equipment and personnel**

Where required, the Client must make the special equipment and personnel available that are necessary for the performance of the services. The Client is solely responsible for the use of all technical aids that are not the property of the Supplier.

### **4.6. Storage of the material of the Supplier**

The Client shall ensure that the material belonging to the Supplier is stored in an appropriate, adequate and locked place. If these materials are stored in an establishment of the Supplier on the premises of the Client, the Client shall ensure surveillance.

## **5. Price, terms, payment and securities**

### **5.1. Determination of the price**

Unless the price has been expressly agreed for one or more specific Assignments, it shall be determined for each Assignment in accordance with the Supplier's then applicable standard rate for such Assignments and subject to adjustment in accordance with the revision clauses in the Special Conditions and any change in taxes during the term of the Assignment.

The following are not included in the base price, and are therefore subject to a surcharge or additional invoicing:

- (a) Dutch or foreign taxes (such as, but not limited to VAT), fees, (withholding) taxes and all related obligations, concerning the Assignment or performance thereof (hereinafter the "Tax(es)"). All payments by the Client are made without any deduction with regard to Taxes, unless such deduction is required on the basis of the applicable law or an applicable double taxation treaty. The Client will, upon first request, provide the Supplier with the documents and documentation on which, where appropriate, such withholding is based. The Client and the Supplier will make every effort and help each other to obtain a refund of the deduction made. Any Tax Refund will be refunded to whom it belongs;
- (b) the additional cost due to special circumstances in the execution of the Assignment which are not stated in the agreement;
- (c) the surcharge for the performance of services outside normal working hours, such as e.g. on Saturdays, Sundays and public holidays;
- (d) the cost of waiting times caused by the Client, and
- (e) in connection with the samples (i) the storage costs (storage fee) if storage has been agreed, (ii) the handling and freight charges if the samples are returned, and (iii) the costs of destruction unless these are already included in the price.

### **5.2. Compensation in the absence of full performance of the Assignment**

If the intended service or part thereof cannot be provided due to an event beyond the Supplier's reasonable control, including the Client's failure to meet its own obligations under the agreement, the Supplier will still be entitled to payment of (i) the amount of all non-recoverable expenses incurred by the Supplier; and (ii) the part of the agreed fee in proportion to the services actually performed.

### **5.3. Terms of payment - due and payable character**

All invoices of the Supplier must be paid by the Client without delay, unless a term of payment has been expressly granted. Failure to timely pay one of the debts makes all other debts immediately due and payable.

#### **5.4. Rights of the Supplier in the absence of timely payment**

In the event of non-payment on the thirtieth day after invoice date, as of the thirty first day after invoice date the following shall become automatically due without prior notice of default:

- (a) default interest at the interest rate as determined by the legislation implementing the Directive on Late Payment in Commercial Transactions;
- (b) a lump sum for extrajudicial collection costs equal to ten percent (10%) of the invoiced amount, with a minimum of fifty (50) euros; and
- (c) a reasonable compensation for all other collection costs in excess of that lump sum and incurred due to late payment, including a court procedure indemnity in accordance with procedural law.

#### **5.5. Retention of title**

If the agreement includes a delivery of goods by the Supplier, these goods will remain the property of the Supplier until full payment of the price of those goods and all accessories, and of all other due and payable debts of the Client.

#### **5.6. Concurrence of rights**

In the event of bankruptcy of the Client or any other form of concurrence of rights between the Client's creditors, the Supplier will be entitled to reconcile all current agreements with the Client prematurely on that date and to apply set-off.

#### **5.7. Additional security**

At the Supplier's first request, the Client undertakes to provide adequate security for the payment of all amounts that the Client owes to the Supplier by virtue of Assignments or otherwise.

### **6. Other obligations of the Client**

#### **6.1. Subsidiarity**

Any claim that the Client would have against the Supplier due to the performance or non-performance of the Assignment by the Supplier is subsidiary to the - contractual and legal - claims of the Client against third parties in connection with the goods, data, services or activities to which the Assignment relates. The Client therefore undertakes to first exercise those rights against those third parties and to fulfill its corresponding obligations.

#### **6.2. Indemnification**

The Client undertakes to indemnify the Supplier against all possible claims by third parties against the Supplier as a result of an act or omission on the part of the Client. This also includes claims by third parties based on Supplier's alleged infringement of the intellectual rights of that third party through the use of the information provided by the Client.

The Client undertakes to indemnify the Supplier against all possible claims of third parties against the Supplier in connection with the Records drawn up by the Supplier and addressed to the Client.

#### **6.3. Trademark/Logo of the Supplier**

The Client is prohibited from affixing, using or copying any trademark or logo of the Supplier, unless the Supplier has given prior written permission to do so and with strict observance of the conditions imposed in that respect by the Supplier. In the event of a copy, the trademark and/or logo must be applied to all documents where this has been applied by the Supplier himself.

#### **6.4. Audit**

Under no circumstances may the Client or a third party acting on his behalf carry out an audit of the Supplier, unless this audit and its scope have been agreed in writing and accepted by the Supplier. In any event, each audit must be carried out in the presence of the Supplier's staff and only relate to information that is directly related to the physical or technical execution of the Assignment. All costs related to the audit are for the account of the Client.

### **7. Obligations common to both parties**

#### **7.1. No disclosure**

Without the prior written consent of the other party, neither party shall be entitled to make public, or cause to be made public, any communications in connection with the Assignment other than that it exists.

#### **7.2. Confidentiality**

The Client and the Supplier shall also treat all confidential information obtained to the occasion of the execution of the Assignment as strictly confidential and make every effort to maintain this confidential nature. This obligation does not apply if this information (i) was already publicly known or in the possession of the other party at the time of disclosure, (ii) became public other than as a result of an attributable failure of the party that received the relevant information from the other party, (iii) had already been developed by the receiving party independently of the information received by it under the Assignment, (iv) is available from a third party without that third party being in breach of any duty of confidentiality to the disclosing party through disclosure to the receiving party, (v) is required to be disclosed or made public by law or regulation, or (vi) is used by a party for its legal defence.

This obligation also applies after the termination of the Assignment, but is then limited to a term of three (3) years.

#### **7.3. Protection of personal data**

Personal data exchanged within the framework of the Assignment may only be used within the framework of the Assignment and in compliance with the General Data Protection Regulation. The parties undertake to take the appropriate measures to secure these data and their processing, so that access to it only takes place in accordance with the said Regulation.

The transfer of personal data to a country outside the EU is only allowed after a prior agreement has been concluded between the exporter and the importer of these data, containing the standard clauses approved by the European Commission on the protection of these personal data.

#### **7.4. Liability insurance**

Both parties undertake to insure their civil liability properly and sufficiently with an insurance company recognised in the Netherlands, and to provide proof thereof at the simple request of the other party.

#### **7.5. Transfer of rights and obligations**

With the exception of the provisions of Article 3.3 above, neither party may transfer its rights and obligations under the agreement to third parties without the prior written consent of the other party. Legal entities belonging to the same group of a party shall not be regarded as third parties for this purpose.

#### **7.6. Canvassing**

During the term of the agreement and for a period of twelve (12) months after its termination, the parties are prohibited from directly or indirectly requesting or encouraging any person who was employed by or performed services for the other party (including a company from the same group) to leave the company, unless with the prior written consent of the other party or on the basis of a voluntary application by the above-mentioned person after a general vacancy announcement. If a party uses the services of that person in violation of this prohibition, compensation will be automatically owed to the other party, equal to twice the gross annual salary of the person of who's services the other party has been deprived.

#### **8. Explicit rescission clause**

The fulfilment by the Client of his obligations set out in Articles 3.7, 4, 5, 6 and 7 and the punctual payment of the amounts invoiced by the Supplier in accordance with the agreed terms of payment constitute the essential elements of the agreement. In the event of a breach of one or more of these obligations by the Client, the Supplier may either rescind the agreement for breach of contract without prior notice of default nor judicial intervention or opt for further performance of the agreement. In the latter case, the Supplier will be entitled to charge the price for the additional services provided by the Supplier as a result of that shortcoming. Even if the agreement is not rescinded, the Supplier shall be entitled to suspend all performances in accordance with Article 3.4. and to payment of all the costs due by virtue of Article 5.

#### **9. Divisibility**

Should one or more provisions of these General Conditions be void or unenforceable, the validity or enforceability of the remaining provisions shall in no way be affected or impaired thereby. The void or unenforceable provision will be replaced by the valid and enforceable provision that corresponds most closely to it.

#### **10. Applicable law**

Unless explicitly agreed otherwise, Dutch law shall apply exclusively to the agreement and all related Assignments.

#### **11. Disputes**

All possible disputes between the Supplier and the Client will be settled amicably between the parties. In the absence of an amicable settlement, and unless the parties agree to an alternative method of dispute resolution, the courts of Rotterdam (the Netherlands), shall be exclusively competent.

These General Conditions have been drawn up in Dutch and translated English. In case of discrepancies, the provisions of the Dutch text shall prevail.