

Standard Terms and Conditions

The present standard terms and conditions, hereafter to be referred to as: 'the standard terms', were implemented by the 'Stichting Koninklijk Nederlands Instituut voor Zeeonderzoek' in February 2008. The NIOZ is registered at the Chamber of Commerce Noordwest-Holland in Alkmaar under number 41240385.

1. Definitions

1.1

The NIOZ:

The Stichting Koninklijk Nederlands Instituut voor Zeeonderzoek, [Royal Netherlands Institute for Sea Research], a Netherlands government sponsored foundation under Dutch law domiciled on Texel charged with conducting the research; also referred to as party;

1.2

The Principal:

Any natural or legal person who or which commissions the NIOZ to conduct research; also referred to as party;

1.3

The Agreement

An agreement between the principal and the NIOZ to conduct research, which may include the possible rendering of services and/or the supplying of goods, to which the present standard terms are declared applicable;

1.4

The Proposal or Research Proposal:

An offer by the NIOZ to conduct research, which may include the rendering of services and/or the supplying of goods, defining the activities and other information relevant to the research;

1.5

The NIOZ Staff:

The NIOZ staff or third parties engaged by the NIOZ

1.6

The Principal's Staff:

The staff or third parties employed by the principal.

2. Applicability of the Present Standard Terms

2.1

The present standard terms shall be applicable to the agreement.

2.2

The present standard terms may be derogated from only in a written agreement.

2.3

Any standard terms and conditions used by the principal shall be inapplicable.

3. Definition of the Research

3.1

The objectives of the research, the method of execution, the duration and the place where it is to be conducted and the nature of the results shall be laid down in a research proposal which shall be annexed to the agreement between the principal and the NIOZ.

3.2

Amendments, supplements and/or additions to the agreement shall become binding as soon as these have been agreed in writing between the principal and the NIOZ.

4. Execution of the Research

4.1

The NIOZ shall use reasonable efforts to ensure that the object of the research set out in the research proposal is achieved and the NIOZ shall perform the research using its best knowledge and skills, in accordance with the state of the art at the time of the performance of the research and in accordance with all generally recognised standards and codes of practice of research institutions working in the same field.

4.2

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 the NIOZ 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.

4.3

The NIOZ shall use reasonable efforts to conduct the research within the period agreed in consultation between the principal and the NIOZ, unless this cannot reasonably be required given the circumstances.

4.4

The period referred to above in paragraph 4.3 shall not commence until the agreement has been signed by both the principal and the NIOZ and after the principal has indeed made all the goods or information necessary for the research available to the NIOZ. If the term appears to be exceeded, the NIOZ shall confer with the principal as soon as possible. The NIOZ shall not be in default solely due to the expiry of the term.

4.5

Unless expressly included in the research proposal, conducting searches into the existence of patent rights held by third parties or reviewing patentability shall not be part of the agreement.

4.6

If the agreement (partly) concerns research on samples, then – except when it is agreed that sampling is to be done under the responsibility of the NIOZ – solely the principal shall be responsible for the selection, representativity, application of codes, trade mark(s) or product name(s) and for providing the NIOZ with the samples to be researched.

4.7

The research shall be conducted by the NIOZ staff.

4.8

The principal shall inform the NIOZ of properties of goods provided by the principal to the NIOZ in connection with the research which might constitute a hazard and label such goods or their packaging clearly as being hazardous.

4.9

The principal shall ensure that all data which the NIOZ requires or which the principal in all reasonableness ought to understand is required for performing the research is provided to the NIOZ in a timely manner. If data required for the performance of the research is not made available to the NIOZ in a timely manner, the NIOZ has the right to postpone its performance of the research and/or to charge the principal the additional expenses resulting from that delay at the usual rates. Any delay caused herewith shall automatically extend the time period referred to in article 4.3.

5. Price

5.1

The agreement shall indicate whether the research is being conducted for a fixed price or on the basis of costing. If no "fixed price" is included in the research proposal, the amount quoted shall be no more than a non-obligatory estimation of the costs.

5.2

A fixed price shall be considered to be the agreed price.

5.3

If the research is conducted on the basis of costing, the principal shall pay the NIOZ a sum which is fixed by multiplying the time which the NIOZ has invested by the applicable NIOZ rates, together with any other costs.

5.4

The price referred to in the proposal or the research proposal and/or the agreement shall exclude the value added tax payable in the Netherlands, hereafter to be referred to as: 'BTW', and any other government charges, unless the contrary is indicated.

5.5

The price shall in all cases be expressed in Euro's.

5.6

The price shall in all cases be calculated 'ex' the NIOZ (Incoterms 2000), unless the parties have agreed otherwise in writing.

6. Payment

6.1

If requested to do so, the principal shall make payments to the NIOZ during the term of the research to fund the work to be conducted for that research, to a maximum of 90% of the total sum at which the costs of the research have been estimated.

6.2

Payments shall be made on the basis of a payment schedule to be laid down in payment schedule.

6.3

The principal shall be obliged to pay invoices in Euro's, net and within 30 days of the invoice date by transfer onto a bank account to be designated by the NIOZ, setting out the data provided by the NIOZ, such as statement number, project name etc.

6.4

If the principal has failed to pay the relevant invoice within the period described in paragraph 6.3 above, it shall be required to compensate the NIOZ both for the statutory interest calculated over the sum payable to the NIOZ and the collection costs without notice of default being required.

7. Liability

7.1

The NIOZ shall be liable solely for damages (such as damage to property, death or injury) directly resulting from a shortcoming verifiably attributable to the NIOZ in the performance of its obligations. If the NIOZ is liable for damages incurred by the principal, the NIOZ shall solely be liable for direct damages incurred by the principal up to the amount to be paid by the principal for the performance of the agreement in accordance with article 5, to a maximum of EURO 500.000 per event and EURO 1.000.000 per year. Remuneration paid by the NIOZ to third parties for the performance of the agreement shall not be included in the aforementioned amount.

7.2

The NIOZ's liability shall lapse if the damage can be attributed in whole or in part to the principal's actions or failure to act, including a failure to comply with internal regulations and/or safety regulations.

7.3

The NIOZ shall never be liable for indirect damages, including but not limited to consequential damages, loss of profit, missed savings and damages incurred due to production stagnation and/or business interruption.

7.4

The NIOZ, its personnel and others who are not its sub-ordinates used by the NIOZ in connection with the performance of the research shall not be liable for damages incurred by the principal arising out of the application and/or use of (part of) the results of the research.

7.5

The principal and the NIOZ shall not initiate claims against each other's staff in respect of any damage whatsoever. The principal shall save the NIOZ harmless against claims by the principal's staff in respect of direct damage which exceeds the sum referred to in paragraph 7.1 above and in respect of indirect damage.

7.6

The principal shall save the NIOZ and others who are not its sub-ordinates used by the NIOZ in connection with the performance of the research harmless against claims by third parties in pursuance of any damage suffered by such third parties and which:

1. was caused by the way in which the principal requested the research to be conducted;
2. is connected with the research results or which
3. arises from the application or the use of (part of) the research results.

7.7

The NIOZ, its personnel and others who are not its sub-ordinates used by the NIOZ in connection with the performance of the research shall not be liable for damage to objects of the principal which the NIOZ has in its custody in connection with the performance of the research.

7.8

The NIOZ, its personnel and others who are not its sub-ordinates used by the NIOZ in connection with the performance of the research shall not be liable for damage to, or loss of, goods provided by the principal to the NIOZ when the research entails a risk of damage to or loss of such goods.

7.9

If the principal has not met its obligations arising out of article 4.8, the principal shall be liable to the NIOZ, its personnel and others who are not its sub-ordinates used by the NIOZ in connection with the performance of the research, for all damages which result from any such non-disclosed properties of the goods in question. The principal shall indemnify the NIOZ for any claims which might be made by third parties concerning such damages. This shall not apply if the principal proves it did not know the properties in question and could not have known about them.

7.10

The principal shall indemnify the NIOZ for any claims made by third parties concerning intellectual property rights on goods or data provided by the principal, used for the performance of the research and in connection with any claims made by third parties for damages incurred due to the use and/or application of (a part of) the results which infringe third party rights.

7.11

The NIOZ shall accept no liability for damage which is a result of defects in goods supplied to the NIOZ which the NIOZ has re-supplied to the principal, unless and to the extent the NIOZ is able to hold its suppliers liable for that damage. The principal shall save the NIOZ harmless against claims by third parties in pursuance of the damage suffered by these third parties, if this damage is a result of defects in goods supplied to the NIOZ which the NIOZ has re-supplied to the principal, unless and to the extent the NIOZ's supplier should be liable for that damage, and the NIOZ can recover that damage.

7.12

In any cases in which the principal suffers damage for which the NIOZ is liable in pursuance of the requirements of the present standard terms, the NIOZ shall be entitled to restrict or remedy the damage for its own account, or to have this done.

8. Right to results

8.1

The principal shall obtain the full and free exclusive right of use of the results of the research made available to the principal by the NIOZ. The NIOZ shall not be obligated to indemnify the principal against any infringements made by third parties on the right of the principal to the results of the research.

8.2

The NIOZ retains full intellectual property rights at any and all times, including, but not limited to copyrights, model rights and data-bank rights in relation to:

- a. the knowledge and experience available at the NIOZ at the time the research was commissioned (pre-existing knowledge and experience);
- b. new knowledge and experience resulting from the performance of the research;
- c. the results which are obtained outside the scope of the research as referred to in article 1.4;
- d. the (experimental) working methods, (experimental) models, equipment, calculation methods and computer programmes produced as a result of the performance of the research, whose development was not directly envisaged with the research.

8.3

Without prejudice to article 8.2, the NIOZ shall at any and all times be entitled to use the information referred to above under 8.2a – 8.2d and/or have that information used for and/or by third parties.

8.4

Reports, drawings and other material objects which result from the research, shall become the property of the principal, with the exclusion of the NIOZ's copyright(s).

8.5

The principal shall be authorized to publish or disclose a report published by the NIOZ verbatim and in full or to have this done. The term 'disclosure' shall also be considered to include making a report available for examination by third parties. Non-verbatim and/or incomplete publications shall be permitted only with the NIOZ's written permission.

8.6

Without prior written consent from the NIOZ, the principal may not:

- a. use documents provided by the NIOZ, in whole or in part, or have those documents used to institute claims, conduct legal proceedings, for advertising purposes or anti-advertising purposes, tests, and for acquisition and sales in general;
- b. use the name and/or the logo of the NIOZ, in any connection whatsoever in publishing a part or parts of documents issued by the NIOZ and/or for one or more of the purposes referred to in subsection c;
- c. apply the name and/or the logo of the NIOZ or to otherwise connect these to goods tested by the NIOZ, checked by the NIOZ or commented on by the NIOZ, or which were manufactured by the NIOZ.

9. Protection of knowledge

9.1

If the principal finances the full economic costs of a certain research and if the execution of the research leads to results which qualify for patenting, the principal shall be authorized to submit a patent application in its own name and for its own account, unless the invention should serve for a purpose which was not intended when the research was commissioned. If the principal should submit a patent application, it thereby obliges itself to reimburse the NIOZ for the sum which may become payable by the NIOZ to the member of staff who made the invention, on the grounds of article 12, section 6 of the Dutch Patent Act.

If the principal fails to notify the NIOZ in writing within three (3) months after the notice as referred to in article 9.2 of its intention to exercise its right as referred to in article 9.1, or if no patent application is submitted within six (6) months after such notice, this right shall transfer to the NIOZ. The NIOZ has in this case the right to publish, or otherwise make public the patentable material.

9.2

The principal and the NIOZ shall notify each other:

- a) their supposition of patentable materials having been found;
- b) of the fact that a patent application is being submitted;
- c) of the contents of such an application.

Moreover, they shall co-operate with one another in full when submitting patent applications.

9.3

If a party obtains a patent in respect of a result of the research, it shall grant the other party a non-exclusive license to this, under terms and conditions to be mutually agreed, on the grounds of which parties may derive those rights they have pursuant to article 8. The license shall not be freely transferable. In doing so, it shall irrevocably authorize the opposite party to have the licence granted in this way, entered into any register.

9.4

The applicant/holder shall be at liberty, at any and all times, to withdraw a patent application or to allow a patent granted to expire. The other party (principal or the NIOZ) shall then have the right of first refusal to have the application or the patent granted transferred and registered in its name.

10. Confidentiality

10.1

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

11. Academic Publication

11.1 The research is undertaken in pursuance of the NIOZ's public mission. Therefore, any employee or student of the NIOZ (whether or not involved in the research) may, provided the NIOZ has not received a Confidentiality Notice under clause 11.2:

- (a) discuss work undertaken as part of the research in seminars, tutorials and lectures; and
- (b) publish any results of the research.

11.2 The NIOZ will submit to the principal, in writing, details of any results that any employee or student of the NIOZ intends to publish ("Publication Notice"), at least 40 days before the date of the proposed publication. The principal may, by giving written notice to the NIOZ ("Confidentiality Notice"):

- a) require the NIOZ to delay the proposed publication for a maximum of 6 months after receipt of the Confidentiality Notice if, in the principal's reasonable opinion, that delay is necessary in order to seek patent or similar protection for any of the results that are to be published; or
- b) prevent the publication of any of the principal's confidential information. The principal must give that Confidentiality Notice within 20 days after the principal receives the Publication Notice. If the NIOZ does not receive a Confidentiality Notice within that period, its employee or student may proceed with the proposed publication.

12. Transfer of Rights and Obligations

12.1

The principal shall not be authorized to transfer the rights and obligations arising from the agreement to a third party without obtaining the NIOZ's written permission. This shall not be refused on unreasonable grounds, although the NIOZ shall be authorized to stipulate conditions for granting this permission.

13. Force Majeure

13.1

The execution of the agreement shall be suspended in the event of force majeure. If such a suspension has lasted for 6 months, the agreement may be terminated without judicial intervention with immediate effect by means of a registered letter, without entitling either party to any compensation for damage. In the event of partial compliance by the NIOZ, the principal shall pay the NIOZ a reasonable proportion of the total price.

13.2

Force majeure shall be considered to include: strikes, the illness or resignation of members of staff charged with executing the agreement, delays in the supply of materials, or weather conditions which may in reason delay or obstruct the execution of the research.

14. Termination of the Agreement

14.1

Both parties shall be authorized to terminate the agreement with due observance of a 3-month period of notice while compensating the opposite party for the costs incurred and the obligations already entered into in connection with the execution of the agreement.

14.2

Both parties shall be authorized to terminate the agreement in whole or in part by registered letter without judicial intervention if the other party has remained in default to comply with its obligations under the terms of the agreement within a reasonable period of having been served with a written notice of default.

In case the results of the research after bringing it to an end are not fulfilling the expectations of the principal, this mere fact does not allow the conclusion that the research was of inferior quality as long as the research was conducted according to the state of the art at the time the research conducted.

14.3

Both parties shall be authorized to terminate the agreement in whole or in part by registered letter without serving a notice of default or without judicial intervention if the other party has applied for or been granted a preliminary or definitive moratorium of payments, if the other party has applied for or has been declared insolvent, bankrupt or in involuntary liquidation, if the other party's business is liquidated, if the other party should wind up its present business or if the other party must be considered no longer able to comply with its obligations under the terms of the agreement in any other way. In such case amounts due by the principal to the NIOZ shall become due immediately.

15. Disputes

15.1

Any dispute between the parties in respect of the agreement shall be subject to proceedings for obtaining a binding opinion.

15.2

In the event of a dispute, the party most willing to initiate proceedings shall notify the other party in writing that there is question of a dispute, setting out in brief the subject which is, in that party's opinion, at dispute.

15.3

An advisory committee consisting of one expert to be appointed by each of the parties and an independent chairman to be appointed by those two experts, shall be appointed within one month of the date of the notification referred to above in 15.2. If the parties should have failed to reach agreement on the appointment of the independent chairman within one month, the latter shall be appointed by the judge presiding over the District Court of The Hague.

15.4

The advisory committee shall render a binding opinion to the parties within one month of its appointment. If the committee is unable to render a opinion, or is unable to do so in good time, both the parties shall be authorized to have the dispute adjudicated by the competent court in The Hague.

15.5

Both parties shall bear the costs of the expert which it appoints, and shall contribute by halves to the chairman's costs.

15.6

The agreement shall be governed by the law of the Netherlands, excluding any conflict of law provisions.

16. General

16.1

All the materials, equipment and other aids necessary for the research shall belong to the NIOZ, unless the parties have reached written agreement to the contrary.

16.2

In the event of a visit to the opposite party's premises (which shall include buildings, ships, aircraft, installations etc) both parties shall be obliged to observe the internal regulations and/or safety regulations applicable to users of the relevant premises. Both parties shall ensure that their staff comply with the provisions of the previous sentence.

16.3

Any goods supplied to the principal shall remain the NIOZ's property until all the sums payable in connection with the goods supplied have been paid in full. Any goods supplied to the principal shall however be for the principal's account and risk from the point of delivery onwards.

16.4

Any claims the principal may have in respect of the NIOZ which arise from or are connected with the execution of an agreement shall be completely cancelled if the NIOZ has not been notified of such claims explicitly and in writing within a year of the date of the final invoice.

16.5

The nullity or voidability of one or more of the provisions of the present standard terms shall not prejudice the validity of the remaining provisions of the present standard terms.

16.6

If a provision in the present standard terms has been declared void, the NIOZ shall be authorized to unilaterally substitute the provision which has been declared void.