



GENERAL TERMS & CONDITIONS – version 2 (12-10-2017)

Article 1. Definition of terms, scope of conditions and priority determination

1.1 Definition of terms

Fotein B.V.: Company that performs research and development in the areas of agriculture, fishing, health and food (not biotechnological). In particular: Research and Development-trajectories in agriculture and the food industry, as well as product development and the development of, and execution of assignments focused on Intellectual Property (IP), that deal with Controlled Atmosphere (CA) and Modified Atmosphere (MA). Fotein uses SerFac for installation and other activities.

Background knowledge: all information (including any intellectual property rights) that were property of the client and Fotein B.V. (hereafter: Fotein), as well as all information generated by the client and/or Fotein outside out of the purpose of the research.

Quotation: Fotein's offer to the client to perform a project or deliver equipment at a given price and in accordance with a research work plan.

Research: activities performed by Fotein on the basis of a research work plan agreed between the client and Fotein.

Research work plan: attachment to the offer, describing the activities of the research.

Project: developing and conducting research in the field of Research and Development and it's resulting activities

Delivery: all the actions to pass Fotein's equipment or results to the client

Equipment: Technical goods in the field of Research & Development

Report: a written document giving a description of the performed (part of) research, as well as possible results.

Result: any result obtained from the research within the research area and recorded in a report.

Confidential information: all information received by the receiving party under the contracting party's agreement and 1) which is deemed confidential by the providing party, or 2) which the receiving party may reasonably know or should know that that information is confidential.

1.2 Scope of conditions and priority determination

1.2.1 These terms and conditions apply to all (right) actions of Fotein such as quotations, agreements or acceptances of contracts under (framework) agreements.

1.2.2 In addition to these additional terms and conditions, the General Delivery Conditions Installing Companies (ALIB 2007) apply. In case of contradiction between these terms and conditions and the ALIB terms, what is contained in these terms and conditions prevails.

1.2.3 The terms referred to in 1.2.1 and 1.2.2 prevail over the terms and conditions of the principal, even if Fotein has not explicitly rejected its applicability. A reference by the client to its own purchase, tender or other conditions are not accepted by Fotein, unless otherwise agreed in writing.

Article 2. Quotation, content agreement

2.1 The agreement is established because the quotation submitted by Fotein is accepted by the client within a reasonable period of time and commences on the date stated in the quotation, or, if there is no date on the quotation, the date of the receiving of the written acceptance by Fotein. If, with the agreement of the client, Fotein has begun conducting the investigation, the content of the quotation will be deemed agreed.

2.2 A quotation is non-binding, unless it contains a term for acceptance.

2.3 With the exception of the use to evaluate the client's interest in whether or not to conclude an agreement, the use or disclosure of Fotein's knowledge and ideas contained in the quotation or research work plan is not permitted. This provision also applies to proposals for modifying or supplementing the quotation or research work plan.

2.4 The agreement is executed in accordance with the description of the work included in the quotation and research work plan, with the inclusion of all written amendments.

2.5 Conducting investigations into the existence of third party patent rights or the possibility of patenting, is not part of the agreement. If executing investigations as expressly agreed upon in writing, Fotein shall in no way accept liability for the content and results.

Article 3. Execution of the agreement

3.1 All deadlines stated in the quotation and research work plan are estimates. Fotein is not in default by the expiry of the term. If Fotein finds that a term is likely to be exceeded, Fotein will report this to the client and consult about it.

3.2 Fotein is not required to commence work before all data, samples, devices or other agreed items have been made available to Fotein in the agreed form, numbers and /or quality. Delay in the making available of prior issues will give Fotein the right to determine a revised schedule, as well as the right to invoice the costs incurred as a result of waiting times to the client.

3.3 Fotein is entitled to replace employees who perform the activities. Fotein has the right to outsource (parts of) the agreement under its responsibility by third parties without the prior consent of the client.

3.4 Each Party shall notify the other Party of any indicative particulars at or during the performance of the Agreement which, in the opinion of that Party, are of interest to the other Party.

3.5 The client is responsible for the power supply of machines and devices by the instructions of Fotein.

3.6 The client is responsible for the disposal of packaging materials.

Article 4. Reporting

4.1 Fotein reports to the client about the progress in the execution of the agreement in accordance with the statements in the quotation or the research plan.

4.2 Results or reports are deemed to have been accepted by the client if Fotein has not received a written objection within four (4) weeks after sending it.

Article 5. Price and payment

5.1 All amounts quoted by Fotein in the quotation or research work plan are in Euro and excluding sales tax. These amounts do not include any form of taxes.

5.2 Unless otherwise agreed in the quotation, the amount stated in the quotation is a fixed price. Fotein is entitled to index the unbilled part of the price for the performance of the agreement on 1 January each year according to the annual adjustment of the rates applicable to Fotein.

5.3 In the quote, an agreement can be included as to which conditions lead to a recalculation of additional work or work deductions.

5.4 Additional work will be calculated based on the value of the price determinants applicable at the time the additional work is performed. Deductions will be settled based on the value of the price determinants applicable at the time of concluding the contract.

5.5 The price for the performance of the agreement will be fulfilled by the client in accordance with the schedule shown in the quotation. If no schedule is determined,

Fotein may require advance payment and /or interim invoices.

5.6 Fotein will issue invoices, which will be paid by the Client within eight (8) days after the invoice date.

5.7 If an invoice is not fulfilled in accordance with Article 5.6 within eight (8) days after the invoice date, Fotein is entitled to increase the invoice amount by the legal interest rate, increased by two percent, from the date on which this term expired. In addition, Fotein can charge the collection costs to the client.

5.8 Fotein reserves the ownership of all ordered equipment, materials and any other items delivered to the client by orders, until the total amount for the assignment has been fully met. The client will automatically become the owner after all payments have been made, unless further arrangements have been made for ownership (e.g. IP).

Article 6. Confidentiality

6.1 The receiving party is obliged to treat the confidential information with confidentiality, and to use the information to no other purpose than for the performance of the agreement. These obligations are valid until three (3) years after the conclusion of the agreement.

6.2 The obligations of the previous paragraph do not apply to confidential information of which the receiving party can demonstrate that:

- was generally known at the time of disclosure or, has become well known after disclosure without the control of the recipient party;
- the receiving party already had it at the time when it was informed;
- this had been obtained by a third party without a confidentiality obligation and, to the best of its knowledge, the receiving party may assume that it was not from the issuing party;
- it has been obtained from its own research without using any confidential information received in any way;
- The receiving party must disclose on the basis of a legal obligation or by order of a judicial institute, administrative body or government agency.

6.3 The obligations arising out of Article 6.1 shall not apply if and in so far as they violate Legislative duties and obligations of Fotein, and Fotein provides a serious risk to persons, business, the environment or public health in that context. In that case, Fotein will, if possible, consult with the client before disclosing the confidential information.

Article 7. Rights to results

7.1 Fotein and client will each remain owner of their background knowledge.

7.2 Models, techniques, methods, tools, including software, algorithms and other information, including any improvements or adjustments of the foregoing, are proprietary to Fotein.

7.3 The intellectual property of the results deriving from the agreement lies with Fotein. Within the scope of the agreement as described in the quotation and /or research work plan, the client has a non-transferable, non-exclusive right to use the results.

7.4 Fotein has the right to use the results resulting from the agreement for internal research purposes and education. After making a report, Fotein has the right to use the results contained therein for third parties and, after the agreement has been terminated, to be used by third parties.

7.5 Reports become the property of the client after the provisions of article 5.5 have been met. Fotein reserves

the copyright and provides the client with the right to multiply these items for internal use.

Article 8. Publication

8.1 Fotein has the right to disclose the results in accordance with the provisions of Article 6. During the term of the project, Fotein will submit a proposed disclosure of the results to the client.

8.2 If Fotein has received no written response from the client thirty (30) days after the written notification to the client of the intended disclosure, the client is deemed to agree with the intended disclosure.

8.3 A motivated written request for deferral of disclosure will be granted only for investigation by the Client of any confidential information in the disclosure of results or the possibility, upon permission of Fotein, to request protection for the results concerned.

8.4 Deferment of disclosure of results is granted for a period of two (2) months. If, on the basis of a further arrangement between Client and Fotein, the client has the right to establish and transfer intellectual property rights on such results, the extension will be extended by another three (3) months. After the expiry of this term (s), Fotein is entitled to issue for publication.

8.5 Without the prior written consent of Fotein, the client is not allowed to disclose or partially publish a report or result written by Fotein. Giving third parties access, use for judicial procedures, advertising and recruitment in a more general sense is also seen as public disclosure.

8.6 Client is not entitled to use names and logos of (parts of) Fotein in any connection.

Article 9. Knowledge protection

9.1 To the extent that the results are prone to protection through Intellectual Property Rights, Fotein has the right to vest such proprietary rights to its name and account.

9.2 The parties will provide all necessary cooperation when submitting an application as mentioned above.

Article 10. Liability

10.1 The total liability of Fotein for damage to the client arising out of or relating to the agreement is limited to direct damage with a maximum of the total of the amounts of the deductible of the insurance of Fotein and the payment made by the insurer. The foregoing limitation does not apply if the damage is caused by intentional or conscious recklessness of Fotein. In no case, however, shall the compensation amount to more than the amounts paid by the client.

10.2 Fotein is not liable for damage suffered by the client caused by the use of the results by the client and /or negative publicity, nor for indirect damage, consequential loss or other incidental damage, including not only loss of revenue or profit or loss of data.

10.3 Fotein accepts no liability for damages resulting from defects from Fotein's affairs, including software provided by Fotein to the Client, unless and to the extent that Fotein can claim damage to its supplier.

10.4 Any claim for damages to employees and persons engaged by Fotein is excluded. Employees and persons affiliated with Fotein may at any time rely on this third-party injunction.

10.5 The client indemnifies Fotein against third party claims that are in any way related to the work done by Fotein for client or arising from the use of results. Client indemnifies Fotein against third party claims arising from the use of business and data made available to Fotein in connection with the performance of the agreement.

Article 11. Equipment Warranty

11.1 Unless otherwise agreed in writing, Fotein gives a guarantee of proper performance for a period of twelve months after delivery of the agreed performance. The guarantee will start on the date on which the delivery document is signed.

11.2 Any claim for warranty expires if the client acts in violation of any of the following conditions:

- Installations and devices may not be exposed to temperatures below 0°C or above 40°C and must be installed in a dry, dust-free area.
- The frequency of the power supply should be 50 ± 10 Hz, unless other arrangements have been made in writing;
- Service must be performed by a Fotein-approved (trained) company; It is possible that due to damage, the warranty expires.

Article 12. Force majeure

If Fotein or Client can not fulfill its obligations under the agreement as a result of force majeure, the party concerned may suspend its obligations during the existence of this situation, provided that the other party has been explicitly notified in writing immediately after the commencement of the force majeure. Force majeure applies to situations which prevent the execution of the agreement and which are not due to the fault of the party in force, or due to law, legal act or traffic in force, including, but not limited to, means the loss of animals and plants used in the execution of the agreement.

Article 13. Termination

13.1 Each party is entitled to dissolve the agreement with immediate effect and without prejudice to the right to compensation if the other party substantially fails to comply with any essential commitment arising from the agreement and the defaulting party does not comply within the reasonable time frame in the written notice of default by the other party.

13.2 The parties only have the right to terminate the agreement with immediate effect by means of a registered letter in the following cases:

- a. if the other party is declared bankrupt or is granted a suspension of payment, or a request is made for it;
- b. if the company of the other party is liquidated or suspended;
- c. in case of force majeure - as determined in Article 12 and the force majeure has lasted more than ninety (90) days.

Article 14. Miscellaneous

14.1 All damage claims by the client shall expire twelve months after the work has been performed to which these claims relate.

14.2 In the event that it appears that a party may not rely on one or more provisions of these Terms and Conditions, the agreement and the conditions applicable to the remainder remain unchanged. In case of the above-mentioned case, instead of the intended provision, a provision will be made which approximates them as closely as possible with regard to content, scope and effect.

14.3 Client is not entitled to transfer the rights and obligations under this Agreement to a third party without the prior written consent of Fotein. Permission shall not be withheld unreasonably.

Article 15. Disputes

15.1 Dutch law applies to the agreement and legal relations between Fotein and the client.

15.2 All disputes that may arise as a result of the agreement or any further agreements that may result

from it will be settled by the competent court in the district of Fotein.

Article 16. Translation

16.1 In the event of a conflict between a translation and the Dutch version of these Terms and Conditions, the Dutch version will prevail.