

## GENERAL SALES TERMS BIOPROCESS PILOT FACILITY

### 1 Definitions

1. In these general sale and supply Terms the following terms shall have the meaning set out below.

- (a) BPF: the Dutch limited liability company Bioprocess Pilot Facility B.V., having offices in (2613 AX) Delft, the Netherlands, at Alexander Fleminglaan 1.
- (b) Client: the private person or legal entity purchasing Services and/or Products from BPF.
- (c) Final Report means a report describing the results of the Services, by the supply of which to the Client, a Project is closed.
- (d) General Terms: these general sales terms used by BPF in relation to Client, irrespective of the form in which they are presented, for the rendering of Services and/or the sales of Products.
- (e) Product: the product resulting from the Services, if any.
- (f) Project: a project consisting of biomass pre-processing and/or, biomass pre-treatment and/or, fermentation and downstream processing specifically designed to enable the transition of products in the field of biochemicals, food and pharma from testing on a laboratory scale to production on an industrial scale.
- (g) Quotation: the Quotation presented by BPF to Client with respect to the Services and/or Products.
- (h) Safe Use of the hardware (equipment) used by BPF: appropriately addressing any SHE- issues.
- (i) Services: the execution of one or more Projects and rendering advisory services in preparation of and during any such Project, as well as an evaluation thereof after the expiry/termination of any Project.
- (j) SHE-issues: Safety, Health and Environment issues related to the processes applied by BPF when rendering the Services and/or manufacturing the Products.

### 2 Applicability

1. The General Terms shall cover and form part of all Quotations, agreements and other acts, either made orally, in writing, electronic or in any other form, concerning the rendering of Services and/or the supply of Products by BPF to the Client.

2. Deviations from the General Terms shall only apply if and to the extent that they have been explicitly agreed upon in writing between BPF and the Client.

3. BPF explicitly rejects the applicability of any general (purchase) terms used by the Client.

4. If and to the extent that any provision contained in these General Terms should prove not valid for whatever reason, the other provisions of these General Terms shall remain in full force and effect.

### **3 Quotation and agreement**

1. All Quotations made by BPF shall be without any obligation unless explicitly otherwise stated in writing.
2. All Quotations are valid for the period mentioned in the Quotation concerned. If no period is mentioned, the Quotation will be valid for fourteen (14) days after the date mentioned in the Quotation.
3. An agreement with respect to the rendering of Services and/or the supply of Products shall have been concluded as soon as the Client accepts the BPF's Quotation in writing.
4. All Client's instructions in view of the ordering of Services and/or Products with BPF are accepted and carried out exclusively by BPF, with the exclusion of Article 7:404 Dutch Civil Code.
5. BPF is entitled to request that Client places orders for Services and/or Products having a certain minimum quantity or value.
6. Any other party than Client cannot derive any rights from an Quotation accepted by Client.

### **4 Prices, fees and variations**

1. All prices and fees mentioned in BPF' Quotations are in Euros, unless explicitly otherwise stated.
2. Furthermore, all prices and fees are excluding value-added tax (VAT), any other sales tax, duty, inspection or testing fee and any other taxes or government levies, as well as (if applicable) any costs for transport and delivery, unless explicitly otherwise stated.
3. BPF can adjust its prices and fees with respect to new Projects.
4. If in consultation with the Client, deviations from the original agreement for rendering Services and/or supplying Products will be made, the costs deriving from such variations will be invoiced to the Client against the prices and fees that apply at such moment.

### **5 Payment**

1. After acceptance of the Quotation, BPF will send to the Client an invoice for payment of a start fee, equalling an amount of approximately twenty five per cent (25%) of the total value of the Quotation.
2. If Client cancels the Project, irrespective of the reason, and as a consequence, BPF incurs any costs, BPF will make its best efforts to prevent or minimize any of such costs. If it appears not to be possible to prevent or minimize any such cancellation costs and Client cancels the Project less than:
  - (a) thirty (30) days in advance of the planned start date, Client shall compensate BPF for any and all documented hours spent on preparatory work by BPF staff, as well as for any out of pocket costs and other commitments that BPF cannot cancel;
  - (b) fifteen (15) days in advance of the planned start date, Client owes BPF fifty per cent (50%) of the total value of the Quotation;
  - (c) Seven (7) days in advance of the planned start date, then Client owes BPF hundred per cent (100%) of the total value of the Quotation.
3. During the Project, BPF is authorized to send to the Client one or more invoices for milestone payments, based on specific objectives agreed between BPF and the Client.

4. Within two weeks after supply of the Final Report to the Client, BPF will send the final invoice for the Services rendered and/or the Products supplied to the Client under a particular Project.
5. Unless otherwise agreed between BPF and Client, BPF's invoices must be paid within 30 (thirty) days after the invoice date and the Client is in default without any warning or notice of default being required.
6. All payments by the Client to BPF shall first be applied against the oldest of any outstanding invoices, irrespective of any other indication by the Client.
7. Client shall not be entitled to any postponement of payment of BPF's invoices, neither to any set-off or reduction outside the scope of its rights in this respect under mandatory law.
8. BPF is entitled to require security from the Client for the fulfilment of its payment obligation in any form, to be indicated by BPF, such as a bank guarantee. In such event, the Services will only be rendered or the Products supplied after such security has been obtained.
9. From the day on which the Client shall be in default until the day of payment in full, interest shall accrue on the outstanding amount at the statutory rate.
10. If Client continues to be in default in his obligation to pay the outstanding invoice with accrued interest, BPF is at liberty to instruct a debt-collector agency and/or lawyer to collect Client's debt.
11. All collection costs incurred by BPF in respect of such collection, both in law (judicial costs) as well as out of law (extra judicial costs) shall be for the Client's sole account. The amount of the collection costs shall be determined at least 15% (fifteen per cent) of the principal sum due by Client to BPF.

## **6 Performance and operational issues**

1. BPF is an open access facility, working with multiple partners and multiple customers.
2. BPF will use separate logbooks and lab-journals for each separate Project and apply a code name to each of Client's Projects.
3. Upon Client's request and subject to article 8 of these General Terms, BPF will store materials supplied by Client or materials resulting from the Services at BPF's premises in an appropriate environment, including specific technical conditions as agreed upon with the Client and in as far BPF is able to accommodate such request. BPF is authorized to charge a reasonable compensation to Client for any storage services and to limit these services in time.
4. Client can be present during the operation of its Project, provided that Client will follow any instructions provided by BPF.
5. Should Client request that during the execution of its Project, no other Client is present at the premises of BPF, then BPF will make a specific arrangement with the Client presenting such request, for instance by offering Client the possibility to hire BPF's facility in its entirety for the duration of the Project.
6. Client can make use of separate workspace at the premises of BPF in due consultation with BPF's staff and additional conditions to those set out in the Quotation may apply.
7. If it is required that a certain permit is obtained for the execution of a Project, BPF will be responsible for obtaining such permit and the execution of the Project is conditional thereon. At Client's request, Client will be implied in obtaining such permit.

8. BPF has in place appropriate quality regimes for biochemical, food and pharmaceutical products, as well as full protocols for safety, health and environmental issues related to the Services rendered and/or the Products supplied by BPF.
9. If the Project consists of the supply of Products, these Products shall be delivered FCA (Incoterms 2010) BPF, suitably packed and marked for delivery to Client.
10. Title and risk of loss or damage with respect to the Products shall pass to Client when BPF hands over the Products at the premises of BPF to the courier selected by Client.
11. Upon delivery, Client shall store the Products in accordance with the storage terms specified by BPF and/or those terms indicated on the packaging of the Product.
12. All terms of delivery, including but not limited to delivery times, of Products only serve as estimates and are therefore never fatal, unless explicitly stated otherwise.
13. BPF retains title to the Products delivered to Client, until payment has been received in full, including accrued interest and costs referred to in article 5 of these General Terms.

## **7 Complaints**

1. If Client is of the opinion that the Services performed by BPF do not meet the standards agreed upon in the signed Quotation, Client must inform BPF thereof as soon as possible during the Project, but ultimately within fourteen (14) days after delivery of the Final Report. If BPF does not receive any complaint regarding the Services within said term of fourteen days, the Services will be deemed accepted.
2. Immediately upon receipt of the Products, Client will verify all Products for any shortcomings, including incomplete or incorrect delivery. Any claims for incorrect deliveries of Products must be reported in writing to BPF within fourteen (14) days from the date of receipt of the Products, as far as noticeable shortcomings are concerned, and ultimately within two (2) months after delivery of the Products, as far as hidden shortcomings are concerned. If BPF does not receive any complaint regarding the Products within the terms mentioned in this article 7.2, the Products will be deemed to have been received in good condition and accepted by Client.
3. Client will only return rejected Products to BPF after written approval of BPF, provided that that the Products are unused, they are in the Product's original containers and packing material and in a condition no worse than that delivered to Client.
4. BPF may refuse any Product not timely rejected in writing.
5. For any valid claim made by the Client regarding Services and/or Products, BPF and the Client will discuss in good faith how such complaint could be best remedied in compliance with BPF's standing complaints procedure.
6. All of Client's objections against any of BPF' invoices must be notified in writing to BPF within fourteen (14) days after the date of invoice, after which term the amount concerned is considered to be acknowledged for payment in due time.

## **8 BPF warranty and limitation of liability**

1. BPF will perform the Services and supply the Products according to professional standards and to the best of its abilities. However, Client acknowledges that BPF cannot guarantee particular results for any Services or warrant the functionalities of any Products. BPF specifically disclaims all implied warranties of title, non-infringement, merchantability and fitness for a particular purpose.

2. Subject to article 8.1 of these General Terms, BPF warrants that the integrity and quality of its Products comply with the description agreed upon in the Quotation, on the understanding that the Products are transported, stored and used in accordance with the instructions for use provided by BPF.
3. The storage by BPF of any Product at the request of the Client, takes place at the expense and risk of the Client and BPF will not have any liability to that respect, save for wilful misconduct or gross negligence. Furthermore, BPF will not be liable for damages resulting from the release and/or further use and/or processing of any Product by the Client.
4. In cases of force majeure, as defined in article 6:75 of the Dutch Civil Code, BPF will make its best efforts to prevent or minimize any damages resulting there from. If such damages cannot be prevented, BPF's liability is limited as set out in article 8.9 of these General Terms.
5. The liability of BPF due to an attributable failure to perform under any agreement concluded between BPF and Client will be limited to compensation of the direct damages, for which BPF has in place appropriate insurance.
6. Any liability of BPF for special, punitive, consequential or indirect damage, including but not limited to loss of profits, loss of turnover, loss of prospective profits or anticipated sales or goodwill is excluded.
7. In as far as BPF accepts storing of any materials at the request of the Client, as referred to in article 6.3 of these General Terms, BPF will administer these materials with due care in accordance with the conditions agreed upon with Client. BPF will not have any further liability to that respect, save for wilful misconduct or gross negligence.
8. In the situation that the materials delivered by the Client to BPF cause any damages, either during storage or during the rendering of Services, and BPF can demonstrate that such damages are neither attributable to its storage conditions, nor to the hardware (equipment) used during rendering the Services, BPF shall not have any liability for the damages referred to in this article 8.8, save for wilful misconduct or gross negligence.
9. The liability of BPF shall, save for wilful misconduct or gross negligence, never exceed the sum stipulated for the Services and/or Products to which the failure pertains (or, in the event of a long term agreement, twenty per cent (20%) of the total amount paid by Client to BPF in the twelve (12) months preceding the failure).
10. This clause does not apply to death or personal injury to the extent that BPF cannot by law exclude or limit its liability for such damages.

## **9 Obligations of the Client**

1. Client will provide BPF in due time with complete information and/or materials required by BPF for the rendering of Services and/or the supply of Products and/or the application for the permit referred to in article 6.7 of these General Terms. Client commits to the best of its knowledge that (i) such information is correct and complete and (ii) such materials are fit for the purpose of the Project and free from agents presenting a risk for contamination of the premises and/or the equipment used by BPF. Furthermore, Client warrants that (iii) it is entitled to provide BPF with such information and/or materials and Client indemnifies BPF against all third parties' claims with respect to this warranty provided under (iii).
2. Client will either send any information and/or materials to BPF electronically, or have

these handed over to a BPF staff member at the following address: **BPF, Alexander Fleminglaan 1, 2613 AX Delft**. BPF cannot confirm safe receipt of any information/materials sent by registered mail, which should therefore be avoided.

3. During the execution of the Project, Client will only access the premises of BPF after explicit consent of BPF and it will follow the directions provided by BPF's staff.

4. Client shall give and make no other warranty or representation on behalf of BPF's Services and/or Products as to quality, reliability, fitness for purpose or any other feature of the Services and/or Products than those given by BPF to the end user as set forth in the warranty literature applicable to the specific Service and/or Product.

5. If Client unilaterally extends any warranty provided by BPF with respect to its Services and/or Products, Client shall indemnify BPF for any liability caused by such extended warranty.

6. Client agrees to use BPF's Products in strict accordance with applicable instructions, warnings and other information in user manuals and other Product documentation, and in the manner for which they were intended.

7. Client agrees to indemnify BPF in the situation that the materials delivered by the Client to BPF cause any damages, as referred to in article 8.8 of these General Terms.

## **10 Intellectual Property**

1. All results arising during the Project, including any intellectual property rights vested therein or based thereon, will be owned by Client and BPF shall provide all cooperation reasonably required for vesting and/or protecting those rights.

2. Client will provide BPF with a non-exclusive, royalty-free license, without the right to grant sub-licenses, with respect to one or more of Client's specific, existing rights of intellectual property, solely in as far as this is required, at the election of BPF, for the execution and for the duration of the Project.

3. Furthermore, Client will provide BPF, with a non-exclusive, royalty-free license, for an unlimited period of time and without the right to grant sub-licenses, with respect to the results of the Project, in as far as this is required, at the election of BPF, for the Safe Use of its hardware (equipment).

4. Finally, Client will provide BPF, to the extent controlled by Client, with a non-exclusive, royalty-free license, for an unlimited period of time and without the right to grant sub-licenses, with respect to its existing know-how, in as far as this is required, at the election of BPF, for the Safe Use of its hardware (equipment).

## **11 Confidentiality**

1. Both BPF and Client undertake to observe strict confidentiality with regard to all confidential information they receive from each other, as further detailed in the applicable confidentiality disclosure agreement. They shall also impose the aforementioned obligation on their employees as well as to third parties who have been employed by them in connection with any agreement between BPF and Client.

2. Information will in any event be regarded as confidential if either BPF or Client indicates such information as confidential.

## 12 Term and termination

1. Either BPF or Client is entitled to terminate an agreement in place between them with immediate effect and without any judicial intervention being required if:

(a) its counterpart has not, not timely or not properly fulfilled its obligations hereunder and, such default can either not be cured or, if curable, has not been cured within fourteen (14) days after receipt of written notice thereof from the other party, all without prejudice to the right of the terminating party to claim the damages it has suffered as a result of the termination of this agreement; or

(b) its counterpart files for bankruptcy or suspension of debts (*surséance*), a petition for bankruptcy has been filed against it, passes a resolution for its liquidation, if a liquidator is appointed in respect of its assets or if the counterparty makes an assignment for the benefit of its creditors, or deceases.

2. The termination of an agreement between BPF and Client does not release Client from any payment obligation regarding any Services rendered and/or Products supplied by BPF, including but not limited to any Project related costs, such as the cleaning of the hardware (equipment) used by BPF, unless BPF is in default with regard to such Product or Service.

3. The provisions of these General Terms regarding limitation of liability (8), intellectual property (10), confidentiality (11) and applicable law and disputes (13) shall survive expiry or termination of any agreement between BPF and Client.

## 13 Disputes

Any disputes following from or arising in connection with any agreement between BPF and Client shall be finally settled under the Arbitration Rules of the International Chamber of Commerce by one arbitrator appointed in accordance with said Rules. The rules of law, as referred to in article 21 of those Rules, shall be Dutch law. The language of arbitration shall be English and the place of arbitration shall be The Hague, the Netherlands.

Before starting this procedure, an independent auditor can check if a perceived violation indeed took place.

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