

**GTC AGROLAB Dr. Verwey EN**

## **GENERAL TERMS AND CONDITIONS OF AGROLAB DR. VERWEY B.V. IN BARENDRECHT (NL)**

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**Note:**

**These General Terms and conditions are a translation of the “Algemene voorwaarden AGROLAB Dr. Verwey B.V.” filed within the Rotterdam Chamber of commerce. In the event of any difference between these two Terms and Conditions, the Dutch text will prevail.**

### **I. Scope of application, written form, modification, applicable law and partial ineffectiveness**

1. These General Terms and Conditions (GTC) apply to the preparation, content and performance of all agreements between AGROLAB Dr. Verwey B.V. and the customer. They also govern all future business relationships, even if not expressly agreed upon again. AGROLAB Dr. Verwey B.V. expressly objects the validity of the customer's general terms and conditions.
2. Amendments or supplementations to these GTC by separate agreement or to the contracts concluded in the scope of application of these GTC shall only be effective if made in writing. This also applies to the abrogation of the requirement of written form. Notice of termination and other declarations, which are directed towards the termination or cancellation of contractual relationships, shall also only be effective in writing. Amendments or supplementations to these GTC only apply to the supply or performance, which the separate agreement refers to. The employees of AGROLAB Dr. Verwey B.V. are not authorised to undertake amendments by separate agreement. Only the management of AGROLAB Dr. Verwey B.V. is authorised to change the GTC or to enter in such an agreement. General amendments or supplementations to these GTC by AGROLAB Dr. Verwey B.V. shall become effective after specific notification to the customer, also for current contractual relationships, if the customer does not contradict the envisaged amendments or supplementations within four weeks after notification.
3. The present GTC and any other legal relationships between the customer and AGROLAB Dr. Verwey B.V., including the conclusion thereof, are solely subject to Dutch law, to the exclusion of the UN Convention on the International Sales of Goods (Vienna Sales Convention).
4. The ineffectiveness, invalidity or nullity of individual provisions of these GTC, or if any provision of the GTC is declared nonbinding or, for any other reasons, nonbinding, leaves the effectiveness of the remaining provisions of the GTC and of the contracts concluded under or with the GTC unaffected as such. As far as individual provisions of such contracts should be ineffective, invalid or null, the customer and AGROLAB Dr. Verwey B.V. shall be obliged to create an effective provision, closest to the economic intention of both parties, in place of the ineffective provision.

### **II. Conclusion of contract, contents of the contract, inquiry, information and performance by third parties**

1. Offers of AGROLAB Dr. Verwey B.V. are without obligations and are not binding. Orders of the customer shall not be considered as accepted by AGROLAB Dr. Verwey B.V. before confirmation of the order, which can also be given verbally, unless AGROLAB Dr. Verwey B.V. indicates that the order has been accepted by undertaking appropriate activities based on the order or by other explicit means.
2. The content and scope of the assignment ensue from the order confirmation by AGROLAB Dr. Verwey B.V. Under no circumstances will any obligation arise for AGROLAB Dr. Verwey B.V. to owe a specific economical success. AGROLAB Dr. Verwey B.V. is entitled to determine the method and

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manner of the performance of services according to appropriate discretion unless otherwise agreed in writing.

In the case of a conformity assessment in which no information on the use of the measurement uncertainty is given, the sites of AGROLAB GROUP apply the discrete approach as a decision-making rule. This means that in such a case the measurement uncertainty is not taken into account in the conformity assessment, unless otherwise agreed with the customer.

3. As far as AGROLAB Dr. Verwey B.V. performs analytical services, laboratory reports shall be transmitted to the customer in principle by e-mail with electronic signature. Therefore, the customer shall inform AGROLAB Dr. Verwey B.V. of an e-mail account. The customer is obliged to regularly check the e-mail account named by the customer for new e-mails and to inquire of AGROLAB Dr. Verwey B.V. when a laboratory report has not been received within the usual period. AGROLAB Dr. Verwey B.V. has the right to communicate laboratory reports also by other means (letter, telefax, customer portal etc.).

4. Without an appropriate deviating agreement, placed orders do not include the obligation of AGROLAB Dr. Verwey B.V. to give information, advice or similar statements. As far as AGROLAB Dr. Verwey B.V. makes such statements nevertheless, they shall be considered as noncommittal suggestions. The customer is furthermore obliged to request written confirmation for verbal statements, which are of substantial importance to him or are provided to be the basis for substantial decisions. Otherwise, the customer cannot refer to the binding character of the statement, unless AGROLAB Dr. Verwey B.V. would be obliged to issue such a statement in individual cases and on account of the placed order and had issued an incorrect statement by intent or gross negligence.

5. AGROLAB Dr. Verwey B.V. is entitled to use one or more subcontractors or otherwise suitable third parties for the fulfilment of its contractual obligations.

### III. Invoices, remuneration, price increase, advance, cost estimate

1. Invoices of AGROLAB Dr. Verwey B.V. are to be paid in full within 3 weeks after receipt by the customer. Subject to the customer's prior consent, invoices can be sent also electronically. In this case, clause II.3. shall apply accordingly. Agreed recurring payments are to be paid at the end of the respective month or at the end of the period stipulated otherwise. In the absence of a deviating agreement, the prices result from the most recent price lists of AGROLAB Dr. Verwey B.V. and are to be understood as net, thus exclusive of VAT, which is to be collected in consideration of the appropriate statutory requirements.

2. As far as not otherwise agreed, AGROLAB Dr. Verwey B.V. is entitled to the remuneration or any other pecuniary claim for each individual supply or other performance as soon as it has been carried out or executed. All supplies and performances, which are not expressly included in the agreed fee, are to be remunerated separately.

3. AGROLAB Dr. Verwey B.V. reserves the right to unilaterally implement a reasonable price increase, if specific sample characteristics, which were unknown at the time of acceptance of an analysis order, require additional work or costs. AGROLAB Dr. Verwey B.V. is also entitled to implement such a price increase, if any legal provisions or other generally accepted regulations, which have to be considered by AGROLAB Dr. Verwey B.V., are changed or modified during the processing of the order or after the order confirmation and these changes or modifications result in extra costs or an increase in supply, activities or other needed performances for AGROLAB Dr. Verwey B.V.. AGROLAB Dr. Verwey B.V. reserves the right to increase prices, due to rising personnel or material costs during the execution of the order or contract. The latter does not apply if and when a fixed price is agreed upon. When the customer is informed about the increase in prices he shall be given the reason for the increase.

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4. AGROLAB Dr. Verwey B.V. is entitled to request advance payments, which become due for payment within one week after notification of the demand for this advance payment. Advance payments can also be requested for non-self-contained parts of a supply or performance.

5. Cost estimates of AGROLAB Dr. Verwey B.V. are noncommittal. AGROLAB Dr. Verwey B.V. will notify the customer as soon as possible, if it becomes foreseeable that the estimated costs will be exceeded.

### **IV. Dates, additional respite, acceptance, notice of defect and subsequent performance**

1. AGROLAB Dr. Verwey B.V. observes dates and terms of delivery with the diligence of an orderly businessman. The conclusion of a fixed transaction always requires a special and written agreement. Dates and periods stated by AGROLAB Dr. Verwey B.V., when supplying services or work performances, are based on an estimation of the work according to customer's specifications. Dates and periods are only binding, if this is agreed upon in writing. Definitely agreed periods only commence, if the customer has performed his obligation to cooperate in a particular case. Agreed fixed dates are deferred according to the duration of the customer's failure to perform his obligations.

2. The customer has to grant a period of two weeks for subsequent delivery or performance to AGROLAB Dr. Verwey B.V., if AGROLAB Dr. Verwey B.V. does not meet binding dates or periods for supply or other performances.

3. AGROLAB Dr. Verwey B.V. can separately present any self-contained part of a performance to be rendered for acceptance.

4. The customer shall inform AGROLAB Dr. Verwey B.V. in writing of any objections on account of apparent defects within four weeks after receipt of the delivered goods or of the result of any other performance. Otherwise the delivered goods or performances are considered to have been delivered free of defects. If AGROLAB Dr. Verwey B.V. executes an order, delivers goods or performances, furnishes a service or a work or carries out any other performance to or for a customer who has the quality of an entrepreneur, a private or public law entity or separate estate subject to public law, the delivered goods or performances shall be examined immediately upon receipt and AGROLAB Dr. Verwey B.V. shall be notified of apparent defects in writing immediately and at the latest within one week after receipt of the goods or performances. Otherwise the delivered goods or performances are considered to have been delivered free of defects. The dispatch of the notification in good time shall be sufficient for the observance of the deadline. The following applies to all customers: Defects appearing later on delivered goods or performances are to be notified to AGROLAB Dr. Verwey B.V. in writing within four weeks of detection. Otherwise the delivered goods or performances are to be considered to have been delivered free of defects.

5. The customer is entitled to subsequent performance, if the delivered goods or the result of any other performance by AGROLAB Dr. Verwey B.V. is defective. The subsequent performance can be carried out by elimination of the defect or by supply of a defect-free item at the customer's discretion. AGROLAB Dr. Verwey B.V. is entitled to refuse the customer's request for subsequent performance, if this leads to unreasonable costs. Reduction, termination or rescission of the contract by the customer is excluded during a subsequent performance.

### **V. Liability for defects, other damages and guarantee**

1. The customer's entitlement to subsequent performance, reimbursement of damages and expenses on account of defects of delivered goods or performances or to subsequent performance, self-execution, reimbursement of damages and expenses on account of defects of the results of any other performance shall lapse after one year after receipt of the delivered goods or of the result of any

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other performance. The aforementioned does not apply in the following cases: If AGROLAB Dr. Verwey B.V. has maliciously concealed the defects; if the supply of AGROLAB Dr. Verwey B.V. is a building; if the delivery item is usually used for a building and causes a defect there; if any other performance of AGROLAB Dr. Verwey B.V. represents a building or a performance, whose success consists of a planning or monitoring performance for a building; if the customer is a consumer. Even if the customer is a consumer, the statute of limitations regarding the aforementioned claims on account of defects of other performances is also limited to one year, if the performance of AGROLAB Dr. Verwey B.V. neither consists of the supply of chattel nor of chattel produced by AGROLAB Dr. Verwey B.V. AGROLAB Dr. Verwey B.V. does not take over any liability for defects in the case of the supply of used chattel. The aforementioned claims on account of defects of used chattel shall lapse after one year after delivery, if the customer is a consumer.

2. The right of the customer to assertion of further claims for damages remains unaffected.
3. As far as AGROLAB Dr. Verwey B.V. has guaranteed for a delivery item or for the result of any other performance, it is also liable in the context of this guarantee. However, for damages that are based on the lack of guaranteed characteristics, condition or durability, but do not accrue on the delivery item or the result of the performance itself, AGROLAB Dr. Verwey B.V. is only liable, if the risk of such damages is evidently encompassed by the guarantee.

## VI. Samples - delivery , liability and storage, transportation risk

1. The delivery of samples takes place at the customer's risk and expense, inasmuch as the sample material is not to be picked up by AGROLAB Dr. Verwey B.V. on account of a written agreement. The sample material must be packed properly and with consideration to possible instructions given by AGROLAB Dr. Verwey B.V. and applicable rules and legislation, if the shipment is carried out by the customer. The delivery of dangerous (for example poisonous, corrosive, explosive, highly inflammable, radioactive) sample material as well as of samples with harmful and troublesome components (for instance chlorine, bromine, mercury, fluorine, arsenic etc.) can only be carried out after appropriate coordination with and consent of AGROLAB Dr. Verwey B.V. The customer is obliged to provide AGROLAB Dr. Verwey B.V. with all known danger and handling instructions.
2. The customer is obligated - for protection of AGROLAB Dr. Verwey B.V. and its employee's purposes - to outline and make visible on the packaging that hazardous substances (gevaarlijke stoffen) are being delivered. This has to be done by using a special label referring to hazardous substances. If the customer intends to deliver potentially explosive substances, the customer is obligated - simply due to the dangerous character of the delivery- to notify AGROLAB Dr. Verwey B.V. prior to delivery and adhere to all instructions given by AGROLAB Dr. Verwey B.V.. The customer is liable for all damages arising for AGROLAB Dr. Verwey B.V. or its employees due to breach of the aforementioned duty.
3. The customer is liable for all damages and consequential damages resulting from the dangerous or harmful properties of sample material. This liability ends with the issue of the analysis record by AGROLAB Dr. Verwey B.V., except for the case that the customer has not orderly complied with his information duty regarding dangers and proper handling and this resulted in damages or consequential damages.
4. The samples are only kept at AGROLAB Dr. Verwey B.V. for the length of time required by legal obligations, as far as not agreed in writing otherwise. Sample materials not used or processed will be stored or disposed of at the expense of the customer at the discretion of AGROLAB Dr. Verwey B.V. AGROLAB Dr. Verwey B.V. can also return the sample material at its own discretion and at the expense of the customer to the customer instead of disposing it, as far as the sample material is to be

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classified as hazardous waste. In all other cases, there will be no reconsignments or restitutions to the customer.

5. Documents and other possessions or property of the customer including data are dispatched or otherwise forwarded to or by AGROLAB Dr. Verwey B.V. exclusively at the customer's risk and expense.

### **VII. Software**

Software provided by AGROLAB Dr. Verwey B.V. is developed with extraordinary diligence and has been carefully tested on diverse computer systems. Approved versions of the products show no defects. Nevertheless, software free from defects does not exist under the current state of the art. For this reason, AGROLAB Dr. Verwey B.V. is not liable for incompatibilities with hardware products or components and other software products or components. The software is only provided by AGROLAB Dr. Verwey B.V. without any guarantee for a specific application. Any risk arising from using the software has to borne by the customer. AGROLAB Dr. Verwey B.V. is not liable for any direct or indirect damage arising from using the software, unless in case of intentional or gross negligent conduct of AGROLAB Dr. Verwey B.V. AGROLAB Dr. Verwey B.V. will make best efforts to resolve defects and offer a version free from defects within the realms of possibility.

### **VIII. Set-off, right of retention, right to withhold performance and prohibition of assignment**

1. The customer's setting-off of a claim of AGROLAB Dr. Verwey B.V. is only possible on account of his own undisputed claims or claims established as non-appealable by a court of law. If the customer is an entrepreneur, a private or public law entity or separate estate subject to public law, the assertion of the right to withhold performance or the right of retention is excluded, unless this right is undisputed or established as non-appealable by a court of law.

2. Objectively justified doubts on the solvency of the customer entitle AGROLAB Dr. Verwey B.V. to make the continuation of the performance dependent on pre-payments and on the settlement of outstanding invoices without consideration of an originally agreed date of payment.

3. The assignment of claims of the customer requires the written consent of AGROLAB Dr. Verwey B.V.

### **IX. Winding up of contracts, reimbursement of expenses and claim for remuneration**

AGROLAB Dr. Verwey B.V. is entitled to the reimbursement of all expenses, which have accumulated hitherto, as well as payment of remuneration according to the actual performance expenses in the case of rescission, notice of termination, avoidance or revocation. AGROLAB Dr. Verwey B.V. can calculate the reimbursement of expenses as well as the remuneration individually or across the board and then demand up to 20 % of the expenditures or the remuneration for the entire order. The customer is entitled to prove in such a case that the actual expenditures or that the remuneration appropriate to the actual performance expenditure is substantially less than the lump sum determined by AGROLAB Dr. Verwey B.V.

### **X. Copyright and confidentiality**

1. AGROLAB Dr. Verwey B.V. expressly reserves the copyright to issued expert opinions, test reports, analyses and similar delivery items and performance results, to which such rights might arise.

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2. AGROLAB Dr. Verwey B.V. transfers the rights of use to the customer as far as necessary for the respective purpose. Thus, rights of use are only transferred to the customer in so far, as it emanates from the placing of order with respect to the content, time and space.

3. AGROLAB Dr. Verwey B.V. makes the results of analyses and similar perceptions gained in connection with an order accessible only to the customer, unless otherwise agreed in individual cases. AGROLAB Dr. Verwey B.V. will treat information, which is not already publicly known or accessible, as confidential. AGROLAB Dr. Verwey B.V. may however use results for internal evaluation purposes and make copies of forwarded documents for its own documentation.

## **XI. Liability and force majeure**

1. AGROLAB Dr. Verwey B.V. is liable for damages as far as this negligence concerns the breach of such contractual obligations, whose observance is essential to achieve the contractual purpose, e.g. due performance of analysis and documentation of results (essential obligations). In all other respects, AGROLAB Dr. Verwey B.V. is not liable for any damages, unless stated otherwise in the following provisions.

2. AGROLAB Dr. Verwey B.V. will be liable only for direct damage attributable to her. Direct damage will include only:

- a. reasonable costs to assess the cause and extent of the damage, to the extent that such assessment concerns damage within the meaning of these general conditions;
- b. any reasonable costs necessarily incurred to have the contractor's defective performance conform to the agreement; and
- c. reasonable costs incurred to prevent or limit the damage, to the extent that the client demonstrates that those costs led to a limitation of the direct damage referred to in these general conditions. AGROLAB Dr. Verwey B.V.'s liability for all other damage, such as indirect damage, including consequential damage, loss of profits, mutilated or lost data or materials, or damage due to business interruption is hereby excluded.

3. Save in the event of intent or wilful recklessness by the contractor or the contractor's management – therefore except for persons under their control – the contractor's liability for damage or loss arising from an agreement or any wrongful act committed against the client will be limited to the amount invoiced for the portion of the work performed, less the costs incurred by the contractor in the engagement of third parties, on the understanding that that amount will not exceed € 25.000 and will in no event be higher than the benefit that the insurance company may pay to the contractor.

4. Any and all liability will lapse within one year after receipt of the delivered goods or of the result of any other performance.

5. The customer shall hold AGROLAB Dr. Verwey B.V. harmless from any claims and actions brought by third parties and concerning the execution of an order or any other performances carried out by AGROLAB Dr. Verwey B.V. for the customer, unless in case of intentional or gross negligent conduct of AGROLAB Dr. Verwey B.V. Legal costs made by AGROLAB Dr. Verwey B.V. related to aforementioned claims and actions from third parties shall be borne by the customer. Claims and actions as meant in this article are, in any case, claims and actions by third parties related to the usage or application of research results.

6. If the placed order includes special risks concerning the danger of the admission of particularly high pecuniary losses, the customer of AGROLAB Dr. Verwey B.V. has to point to it with the placing of the order, failure of which results in the full liability of the customer for any damages suffered by AGROLAB Dr. Verwey B.V. as a result thereof.

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7. Force majeure, labour disputes, riots, official measures and other, unforeseeable, inevitable and serious events release AGROLAB Dr. Verwey B.V. from the obligation to perform for the duration of the disturbance and to the extent of its effect. This also applies, if the events occur at a point in time, at which AGROLAB Dr. Verwey B.V. is in delay. AGROLAB Dr. Verwey B.V. will immediately forward the necessary information to the customer as far as reasonable and adapt its obligations to the changed conditions in good faith.

## **XII. Place of performance and place of jurisdiction**

1. Place of performance is the seat of AGROLAB Dr. Verwey B.V.
2. All disputes arising out of or in connection with contracts between AGROLAB Dr. Verwey and customer or further agreements resulting thereof shall be brought before the competent court in the place where AGROLAB Dr. Verwey B.V. has its seat.
3. The place of jurisdiction of the competent court where AGROLAB Dr. Verwey B.V. has her seat is likewise agreed upon, if the domicile or place of residence of the customer is unknown at the time of filing action or if the customer has moved his domicile or place of residence out of the area of application of the Dutch law after conclusion of contract.